

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

v.

Case No. 17-CV-264

STATE OF WISCONSIN DEPARTMENT
OF EMPLOYEE TRUST FUNDS, et al.,

Defendants.

**STATE DEFENDANTS' SUPPLEMENTED RESPONSES AND
OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS FOR
ADMISSION, INTERROGATORIES, AND REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Federal Rules of Civil Procedure 26, 33, 34, and 36, Defendants State of Wisconsin Department of Employee Trust Funds, State of Wisconsin Group Insurance Board, Robert J. Conlin, Secretary of the Department of Employee Trust Funds (ETF), Board of Regents of the University of Wisconsin System, Raymond W. Cross, President of the University of Wisconsin System, Rebecca M. Blank, Chancellor of the University of Wisconsin-Madison, University of Wisconsin School of Medicine and Public Health, and Robert N. Golden, M.D., Dean of the University of Wisconsin School of Medicine and Public Health (the "State Defendants"), by their counsel, hereby object and respond to Plaintiffs First Set of Requests for

Admission, Interrogatories and Requests for Production of Documents and Things.

GENERAL OBJECTIONS

The State Defendants assert the following objections as to each of the Plaintiffs' First Set of Requests for Admission, Interrogatories and Requests for Production of Documents and Things to State Defendants ("Plaintiffs' First Requests"):

1. The State Defendants object to the Plaintiffs' First Requests to the extent that they purport to impose burdens other than or beyond those imposed by Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure.

2. The State Defendants object to Instruction No. 1, to the extent that it includes individual members of the Board of Regents of the University of Wisconsin System and individual members of the Group Insurance Board on the grounds that it requires these State Defendants to seek discovery from individuals that are not defendants in this case that is not in the possession, custody, or control of the State Defendants.

3. The State Defendants further object to Instruction No. 1 as it relates to requests for electronically produced or stored documents on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. Notwithstanding and without waiving these objections,

electronically produced or stored documents for the following State Defendant custodians were searched using the following search terms:

<u>Custodian</u>	<u>Search Terms</u>
<i>ETF custodians</i>	
Bob Conlin (ETF Secretary)	transgender*
John Voelker (ETF Deputy Secretary)	“sex discrimination”
Pam Henning (ETF Assistant Deputy Secretary)	“sexual transformation*” “gender identity”
Liz Doss-Anderson (Ombudsperson)	“gender transition*”
James Kates (Ombudsperson)	“gender identity disorder”
Mary Richardson (Ombudsperson)	“gender dysphoria”
Lisa Ellinger (Director of the Office of Strategic Health Policy)	transsexual* “gender transition*”
Eileen Mallow (Deputy Director of the Office of Strategic Health Policy)	“gender reassignment*” “gender confirmation*”
Arlene Larson (Manager of Federal Health Programs & Policy)	“sex hormone*” “hormone therap*”
Tara Pray (Member Engagement and Communication Leadworker)	Segal “reinstatement of the benefit exclusion”
Sara Brockman (GIB liaison)	Boyden
Joan Steele (Health Policy Advisor)	Andrews
Shayna Schomber (formerly Gobel) (Manager of Self-Insured Health, Dental, and Supplemental Benefits)	“breast augmentation*” “augmentation mammoplasty” “vaginoplasty”
Renee Walk (Strategic Health Policy Advisor)	penectomy
Jeff Bogardus (Manager of Pharmacy Benefits)	bilateral orchiectomy clitoroplasty
Steve Hurley (Director of the Office of Policy, Privacy and Compliance)	urethroplasty labiaplasty
Mary Alice McGreevy (Privacy Officer)	perineoplasty
Lucas Strelow (Policy Advisor)	subcutaneous mastectomy
Laura Patterson (Policy Advisor)	hysterectomy
Tarna Hunter (Director of Government Relations)	ovariectomy metoidioplasty phalloplasty

	vaginectomy scrotoplasty “arbitrary discrimination”
<i>Other custodians (same search terms)</i>	
Rebecca Blank (Chancellor, University of Wisconsin – Madison)	
Robert Golden (Dean, School of Medicine and Public Health)	
Raymond Cross (President, University of Wisconsin System)	

Responsive non-privileged emails that resulted from this search will be provided in response to the Plaintiffs’ Requests for the Production of Documents. Responsive emails were also collected from the relevant email accounts of GIB members who served at the time the coverage exclusion at issue was under consideration.

4. The State Defendants object to second paragraph in Instruction No. 5 on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. This instruction has a multiplier effect of making a separate interrogatory with discrete subparts for each document produced, creating an impermissible attempt to require answers to interrogatories in excess of the number permitted by Fed. R. Civ. P. 33.

5. The State Defendants object to Instruction No. 11 to the extent it applies to responsive documents that are privileged in their entirety and protected from disclosure. These documents will be included on a compliant

privilege log, but will not be otherwise produced because they are privileged and protected from disclosure.

6. The State Defendants object to Instruction No. 13 because it requests that they provide information that is not within their personal knowledge. Under Fed. R. Civ. P. 33, answers to interrogatories must be made “under oath,” which compels signatories to only provide responses they know to be truthful.

7. The State Defendants object to Instruction Nos. 16 and 17 as applied to the Requests for Admissions on the grounds that such requests would be vague and ambiguous under these instructions, and may require different responses or objections for each verb tense. Requests for Admissions will be responded to as written with no change in verb tense.

8. The State Defendants object to the Plaintiffs’ First Requests to the extent they seek to require the State Defendants to disclose information prepared in anticipation of litigation or protected from disclosure by the attorney-client privilege, work-product doctrine, or any other applicable privileges on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure. The State Defendants do not waive, and expressly reserve, the protection for materials prepared in anticipation of litigation, the attorney-client privilege, the work-product doctrine, and every other privilege and doctrine with respect to each and

every document protected by such privilege or doctrine. Inadvertent production of any such protected information shall not constitute a waiver of any privilege or protection or of any other ground for objection to discovery with respect to the information contained therein. Nor shall such inadvertent production waive the right of the State Defendants to object to the use of any such document or the information contained therein in this action or during any subsequent proceeding. Upon notification that such disclosure was inadvertent, the information and any copies thereof shall be returned immediately.

9. The State Defendants object to any discovery directed at Defendant University of Wisconsin School of Medicine and Public Health (SMPH). In Plaintiffs' response to the State Defendants' motion to dismiss, they concede that "SMPH may be dismissed as a defendant." (Dkt. 39:20 (n.11).)

**SPECIFIC OBJECTIONS AND RESPONSES TO
REQUESTS FOR ADMISSION**

The State Defendants hereby incorporate the General Objections described above into each response below, as if fully restated therein.

REQUEST FOR ADMISSION NO. 1: Admit that the Defendant, Board of Regents, employs Plaintiff, Alina Boyden.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit.

REQUEST FOR ADMISSION NO. 2: Admit that the Board of Regents is responsible for paying Alina Boyden’s salary and providing her with the benefits of employment provided to her as a state employee, including health insurance coverage.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: The Board of Regents objects that the phrase “responsible for . . . providing her with the benefits of employment provided to her as a state employee” is vague and ambiguous. Subject to and without waiving that objection, the Board of Regents responds as follows:

Admit that the Board of Regents is responsible for paying Alina Boyden’s salary. Deny the remainder of Request for Admission No. 2.

REQUEST FOR ADMISSION NO. 3: Admit that Defendant, Board of Regents, employs Plaintiff, Shannon Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Admit.

REQUEST FOR ADMISSION NO. 4: Admit that the Board of Regents is responsible for paying Shannon Andrews’ salary and providing her with the benefits of employment provided to her as a state employee, including health insurance coverage.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: The Board of Regents objects that the phrase “responsible for . . . providing her with the benefits of employment provided to her as a state employee” is vague and ambiguous. Subject to and without waiving that objection, the Board of Regents responds as follows:

Admit that the Board of Regents is responsible for paying Shannon Andrews' salary. Deny the remainder of Request for Admission No. 4.

REQUEST FOR ADMISSION NO. 5: Admit that the Board of Regents is responsible under Wisconsin law to offer GIB-approved health insurance plans to their eligible employees, including Boyden and Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: The Board of Regents objects that the phrase "responsible under Wisconsin law to offer GIB-approved health insurance plans to their eligible employees" is vague and ambiguous. Subject to and without waiving that objection, the Board of Regents responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 6: Admit that Raymond W. Cross ("Cross"), is responsible under Wisconsin law to offer GIB-approved health insurance plans to University employees, including Boyden and Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Raymond W. Cross objects that the phrase "responsible under Wisconsin law to offer GIB-approved health insurance plans to University employees" is vague and ambiguous. Subject to and without waiving that objection, Raymond W. Cross responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 7: Admit that Rebecca M. Blank ("Blank"), is responsible under Wisconsin law to offer GIB-approved health insurance plans to University of Wisconsin employees, including Boyden and Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Rebecca M. Blank objects that the phrase “responsible under Wisconsin law to offer GIB-approved health insurance plans to University of Wisconsin employees” is vague and ambiguous. Subject to and without waiving that objection, Rebecca M. Blank responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 8: Admit that the School of Medicine is responsible under Wisconsin law to offer GIB-approved health insurance plans to their employees, including Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: The Board of Regents objects that the School of Medicine is not a separate, suable legal entity under state law. The Board of Regents further objects that the phrase “responsible under Wisconsin law to offer GIB-approved health insurance plans to their employees” is vague and ambiguous. Subject to and without waiving those objections, the Board of Regents responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 9: Admit that Robert N. Golden, M.D. (“Golden”), is responsible under Wisconsin law to offer GIB-approved health insurance plans to their employees, including Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Robert N. Golden objects that the phrase “responsible under Wisconsin law to offer GIB-approved health insurance plans to their employees” is vague and

ambiguous. Subject to and without waiving that objection, Robert N. Golden responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 10: Admit that the University is engaged in an industry affecting commerce and has more than fifteen (15) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Deny.

REQUEST FOR ADMISSION NO. 11: Admit that the School of Medicine is engaged in an industry affecting commerce and has more than fifteen (15) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Deny.

REQUEST FOR ADMISSION NO. 12: Admit that GIB is part of ETF.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: GIB and ETF object that the phrase “part of ETF” is vague and ambiguous. Subject to and without waiving that objection, GIB and ETF respond as follows:

Deny.

REQUEST FOR ADMISSION NO. 13: Admit that ETF is “a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year” or is an “agent of such a person.”

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Admit.

REQUEST FOR ADMISSION NO. 14: Admit that GIB is “a person engaged in an industry affecting commerce who has fifteen (15) or more

employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year” or is an “agent of such a person.”

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Deny.

REQUEST FOR ADMISSION NO. 15: Admit that ETF staff concluded in or about June, 2016 that ETF was a “covered entity” under the Affordable Care Act (ACA), with respect to the self-insured health insurance plans it offers state employees.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: Admit.

REQUEST FOR ADMISSION NO. 16: Admit that ETF staff concluded that ETF could be held liable under the ACA for denying health insurance coverage for gender transition.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: Deny.

REQUEST FOR ADMISSION NO. 17: Admit that ETF receives federal funds.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Admit.

REQUEST FOR ADMISSION NO. 18: Admit that GIB sets the guidelines for eligibility and specifies the contractual terms for group health insurance plans for state employees.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: GIB objects that the phrase “sets the guidelines for eligibility and specifies the contractual terms” is vague and ambiguous. Subject to and without waiving that object, GIB responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 19: Admit that GIB establishes the health insurance coverage benefits available for Alina Boyden and Shannon Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: GIB objects that the phrase “establishes the health insurance coverage benefits” is vague and ambiguous. Subject to and without waiving this objection, GIB responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 20: Admit that ETF and Robert J. Conlin (“Conlin”), as Secretary of ETF, execute the decisions of GIB with respect to health insurance coverage.

RESPONSE TO REQUEST FOR ADMISSION NO. 20: ETF and Secretary Conlin object that the phrase “execute the decisions of GIB with respect to health insurance coverage” is vague and ambiguous. Subject to and without waiving this objection, ETF and Secretary Conlin respond as follows:

Deny.

REQUEST FOR ADMISSION NO. 21: Admit that Defendant Conlin, as Secretary of ETF, promulgates, with the approval of GIB, all rules required for the administration of group health insurance plans for state employees, including Boyden and Andrews.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Deny.

REQUEST FOR ADMISSION NO. 22: Admit that Defendant Conlin, as Secretary of ETF, provides executive leadership for the policy development and administration of group health insurance for state employees.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Secretary Conlin objects that the phrase “provides executive leadership for the policy development and administration of group health insurance for state

employees” is vague and ambiguous. Subject to and without waiving this objection, Secretary Conlin responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 23: Admit that Defendant Conlin, as Secretary of ETF, develops and recommends policy to the GIB relating to changes in the design of employee benefit plans.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Secretary Conlin objects that the phrase “develops and recommends policy to the GIB relating to changes in the design of employee benefit plans” is vague and ambiguous. Subject to and without waiving this objection, Secretary Conlin responds as follows:

Deny.

REQUEST FOR ADMISSION NO. 24: Admit that ETF creates and distributes a document describing Uniform Benefits for State Employees, which includes descriptions of health benefits and exclusions from those benefits.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Admit.

REQUEST FOR ADMISSION NO. 25: Admit that Defendant Conlin, as Secretary of ETF, enters into contracts with group health insurance providers, such as Dean and WPS, that specify the health benefits and exclusions to be covered under plans offered to state employees.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Deny.

REQUEST FOR ADMISSION NO. 26: Admit that Defendant Conlin issued a memorandum on January 30, 2017, in which he concluded, in consultation with the GIB chair, that the criteria for reinstating the exclusion of gender confirmation treatment had been met and stated that

“ETF issued a 2017 health plan contract amendment to all participating health plans to reinstate the benefit exclusion, effective February 1, 2017.”

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Admit that Defendant Conlin issued a memorandum on January 30, 2017 that contains the quoted language; otherwise deny.

REQUEST FOR ADMISSION NO. 27: Admit that only transgender persons seek “surgery and sex hormones associated with gender reassignment.”

RESPONSE TO REQUEST FOR ADMISSION NO. 27: The State Defendants lack the information needed to admit or deny this Request for Admission.

REQUEST FOR ADMISSION NO. 28: Admit that the exclusion of health insurance coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment” adversely affects only transgender persons, since only they seek such procedures, services and supplies for “gender reassignment.”

RESPONSE TO REQUEST FOR ADMISSION NO. 28: The State Defendants lack the information needed to admit or deny this Request for Admission.

REQUEST FOR ADMISSION NO. 29: Admit that the document titled “The Secretary’s Role” (revised: April 2012), attached as **Exhibit A**, is a true and correct copy of an authentic document created by ETF.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Admit.

REQUEST FOR ADMISSION NO. 30: Admit that the document titled “Correspondence Memorandum” (dated June 22, 2016) (includes one internal Attachment: A), attached as **Exhibit B**, is a true and correct copy of an authentic document created by ETF.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Admit.

REQUEST FOR ADMISSION NO. 31: Admit that the document titled “Correspondence Memorandum” (dated August 12, 2016) (includes two (2) internal Attachments: A and B), attached as **Exhibit C**, is a true and correct copy of an authentic document created by ETF.

RESPONSE TO REQUEST FOR ADMISSION NO. 31: Admit.

REQUEST FOR ADMISSION NO. 32: Admit that the document titled “Correspondence Memorandum” (dated January 30, 2017) (includes two (2) internal Attachments: A and B), attached as **Exhibit D**, is a true and correct copy of an authentic document created by ETF.

RESPONSE TO REQUEST FOR ADMISSION NO. 32: Admit.

**SPECIFIC OBJECTIONS AND RESPONSES TO
INTERROGATORIES**

The State Defendants hereby incorporate the General Objections described above into each response below, as if fully restated therein.

INTERROGATORY NO. 1: Identify and describe all reasons why the State of Wisconsin provides insurance coverage for state employees.

RESPONSE TO INTERROGATORY NO. 1: The State Defendants object that the phrase “provides insurance coverage for state employees” is vague and ambiguous. The State Defendants further object to the extent that this Interrogatory seeks information from non-parties to this litigation. Subject to and without waiving that objection, the State Defendants respond as follows:

Wisconsin Stat. § 40.01(1) provides that “a ‘public employee trust fund’ is created to aid public employees in protecting themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident, thereby promoting economy and efficiency in public service by facilitating the attraction and retention of competent employees, by enhancing employee morale, by providing for the orderly and humane departure from service of employees no longer able to perform their duties effectively, by establishing equitable benefit standards throughout public employment, by achieving administrative expense savings and by facilitating transfer of personnel between public employers.”

INTERROGATORY NO. 2: Identify and describe all reasons why the State of Wisconsin has the Gender Confirmation Treatment Exclusion, including, but not limited to, each and every state or governmental interest that you contend is advanced by the Gender Confirmation Treatment Exclusion, and a detailed explanation for why you contend that the Exclusion furthers that state interest, and all facts in support of your explanation.

RESPONSE TO INTERROGATORY NO. 2: Defendants ETF, Robert J. Conlin, the Board of Regents, Raymond W. Cross, Rebecca M. Blank, the School of Medicine, and Robert N. Golden, lack knowledge regarding the information sought by this Interrogatory. GIB objects that this Interrogatory is premature given that discovery is still ongoing in this matter and because expert disclosure deadlines have not yet arrived. GIB expects that the information requested by this Interrogatory will be addressed by expert

testimony and thus it incorporates into this Response any future relevant expert testimony. Subject to and without waiving these objections, GIB responds as follows:

The coverage exclusion contained in the Uniform Benefits section IV.A.1.c. furthers the state interests contained in Wis. Stat. § 40.01(1), among others.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2: In addition to the state interests contained in Wis. Stat. § 40.01(1), the coverage exclusion contained in the Uniform Benefits section IV.A.1.c. furthers the state interests in (1) avoiding potential costs associated with the coverage at issue; and (2) declining to provide coverage for treatments that are experimental and have not been demonstrated to be safe and effective for treating gender dysphoria.

INTERROGATORY NO. 3: To the extent that any state interest that you identified in response to the preceding interrogatory is related to protection of the State of Wisconsin and/or its taxpayers from adverse economic or financial consequences, describe with particularity how the State and/or its taxpayers would suffer adverse economic consequences if transgender state employees were provided health insurance coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.”

RESPONSE TO INTERROGATORY NO. 3: See the response to Interrogatory No. 2.

INTERROGATORY NO. 4: Identify and describe all the responsibilities of ETF and the ETF Secretary with respect to GIB, including,

but not limited to, its responsibilities related to budgeting, program coordination and related management functions.

RESPONSE TO INTERROGATORY NO. 4: ETF and Secretary Conlin object that the phrase “responsibilities related to budgeting, program coordination and related management functions” is vague and ambiguous. Subject to and without waiving that objection, ETF and Secretary Conlin respond as follows:

The statutory authority and responsibilities of ETF and its Secretary with respect to GIB are set forth in Wis. Stat. ch. 40, including in Wis. Stat. §§ 40.03(1)–(2), (6) as well as in Wis. Stat. §§ 15.03, 15.04, and 15.165(2). In particular, ETF staff administer the programs under the purview of the GIB. This includes analysis of benefit and contract changes, vendor contract administration, and management of day-to-day program operations. ETF staff also facilitate GIB meetings.

INTERROGATORY NO. 5: Identify and describe all the responsibilities of ETF and the ETF Secretary with respect to health insurance coverage for state employees.

RESPONSE TO INTERROGATORY NO. 5: ETF and Secretary Conlin object that the phrase “all the responsibilities of ETF and the ETF Secretary with respect to health insurance coverage for state employees” is vague and ambiguous. Subject to and without waiving that objection, ETF and Secretary Conlin respond as follows:

The statutory authority and responsibilities of ETF and its Secretary with respect to health insurance coverage for state employees are set forth in Wis. Stat. ch. 40, including in Wis. Stat. §§ 40.02(25)(b), 40.03(1)–(2), and 40.51, as well as in Wis. Admin. Code § ETF 10.20 and Wis. Admin. Code ETF ch. 40. More detail on the Group Health Insurance Program can be found in an ETF publication available at <http://etf.wi.gov/publications/et8902.pdf>.

INTERROGATORY NO. 6: For the period from January 2012 to the present, identify the number of state employees provided individual health insurance coverage annually and the number of state employees provided family health insurance coverage annually.

RESPONSE TO INTERROGATORY NO. 6: To the best of ETF's knowledge, the yearly statistics that follow reflect subscriber or contract counts (including Graduate Assistants) and thus depict the number of state employees provided individual and family health insurance coverage annually:

- 2017 individual: 26,463; family: 42,767
- 2016 individual: 26,168; family: 43,054
- 2015 individual: 26,430; family: 44,339
- 2014 individual: 25,981; family: 44,441
- 2013 individual: 25,450; family: 44,378
- 2012 individual: 25,325; family: 44,830

INTERROGATORY NO. 7: For the period from January 2012 to the present, identify the total amount of state funds spent on health insurance coverage for state employees annually and specify the figures, calculations or statistics the State maintains regarding those expenditures.

RESPONSE TO INTERROGATORY NO. 7: ETF objects that the phrases “total amount of state funds” and “specify the figures, calculations or statistics the State maintains regarding those expenditures” are vague and ambiguous. Subject to and without waiving that objection, ETF responds as follows:

<u>Year</u>	<u>Employer (estimate)</u>	<u>Employee (estimate)</u>	<u>Total</u>
2012	\$905,265,208.30	\$127,941,944.50	\$1,033,207,152.80
2013	\$946,162,383.20	\$134,209,071.00	\$1,080,371,454.20
2014	\$987,394,303.90	\$139,909,389.50	\$1,127,303,693.40
2015	\$1,026,746,076.20	\$145,053,934.00	\$1,171,800,010.20
2016	\$979,741,313.30	\$131,984,136.50	\$1,111,725,449.80
2017	\$998,003,809.42	\$132,613,004.50	\$1,130,616,813.92
Total	\$5,843,313,094.32	\$811,711,480.00	\$6,655,024,574.32

INTERROGATORY NO. 8: Identify and explain the reasons for the denials of the Plaintiff, Alina Boyden’s, requests for coverage of gender confirmation surgery and/or rejection of any appeals of those denials of coverage.

RESPONSE TO INTERROGATORY NO. 8: Defendants Board of Regents, Raymond W. Cross, Rebecca M. Blank, the School of Medicine, and

Robert N. Golden had no authority over any of Alina Boyden's requests for health insurance coverage of particular procedures.

As for ETF and GIB, Alina Boyden's request for coverage was denied based on the State of Wisconsin Group Health Insurance Uniform Benefits. Specifically, Section IV.A.1.a. of the 2016 Uniform Benefits, Exclusions and Limitations, excludes coverage for "[p]rocedures, services, and supplies related to surgery and sex hormones associated with gender reassignment." Dean Health Plan affirmed its denial of coverage in a grievance decision dated July 8, 2016. ETF's ombudsperson services affirmed Dean's denial in a letter dated September 20, 2016. ETF did not receive a request for an appeal through ETF's administrative appeals process.

INTERROGATORY NO. 9: Identify and explain the reasons for the denials of the Plaintiff, Shannon Andrews', requests for payment for gender confirmation surgery under her employee health insurance plan and/or rejection of any appeals of those denials.

RESPONSE TO INTERROGATORY NO. 9: Defendants Board of Regents, Raymond W. Cross, Rebecca M. Blank, the School of Medicine, and Robert N. Golden had no authority over any of Shannon Andrews' requests for health insurance coverage of particular procedures.

As for ETF and GIB, Shannon Andrews' request for coverage of services provided in October of 2015 was denied based on a coverage exclusion in her health insurance policy. Specifically, the policy excluded

coverage for certain surgical services including “HEALTH CARE SERVICES for, or leading to, sex transformation surgery and sex hormones related to such TREATMENT.” WPS affirmed its denial of coverage in a grievance decision dated May 5, 2016. On July 1, 2016, Ms. Andrews submitted a health insurance complaint to ETF. On July 26, 2016, before responding to her complaint, ETF learned through an online article in the Milwaukee Journal/Sentinel that the ACLU had filed an EEOC complaint against ETF on behalf of Dr. Andrews based on the denial of her request for coverage. (See <https://www.jsonline.com/story/news/politics/2016/07/26/transgender-researcher-files-discrimination-complaint/87604452/>.) ETF did not subsequently respond to Dr. Andrews’ July 1, 2016, health insurance complaint.

INTERROGATORY NO. 10: Identify and describe any actions taken by Secretary Conlin to determine whether the Gender Confirmation Treatment Exclusion results in arbitrary discrimination, consistent with his obligations under Wis. Stat. § 15.04(1)(g).

RESPONSE TO INTERROGATORY NO. 10: Secretary Conlin objects that the phrase “consistent with his obligations under Wis. Stat. § 15.04(1)(g)” is vague and ambiguous. Secretary Conlin further objects to this request, to the extent that it addresses communications protected by the attorney-client privilege. Subject to and without waiving that objection, Secretary Conlin responds as follows:

Secretary Conlin is familiar with the language in Wis. Stat. § 15.04(1)(g), which requires heads of state agencies to “examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes.”

Secretary Conlin is familiar with Wis. Stat. ch. 40, which governs ETF, and the ETF chapters of the Wisconsin Administrative Code. Under Wis. Stat. § 40.03(2)(f), ETF’s Secretary may delegate to other ETF employees any power or duty of the Secretary. Secretary Conlin has delegated regular review of those statutes and administrative code provisions to ETF’s Office of Legal Services (OLS), Office of Policy, Privacy and Compliance (OPPC), Division of Retirement Services (DRS), and Office of Strategic Health Policy (OSHP).

With respect to health insurance, Secretary Conlin has delegated regular review of applicable statutes and administrative code provisions to OLS, OPPC, and OSHP. Regarding the State of Wisconsin Group Health Insurance Program’s Uniform Benefits and the administration of that Program, for purposes of Wis. Stat. § 15.04(1)(g), Secretary Conlin has delegated review of the Uniform Benefits primarily to OSHP.

Specific to the Uniform Benefits exclusion at issue in this case, the exclusion was a part of the first publication of the Uniform Benefits, effective

January 1, 1994. It was included in the Uniform Benefits by the Group Insurance Board (GIB) because the Section IV. benefits and services were generally accepted by health insurance companies and health care providers to be experimental and not medically necessary. ETF notes that this type of exclusion remained the industry standard until the issuance of the federal Department of Health and Human Services (HHS) final rule interpreting Section 1557 of the Patient Protection and Affordable Care Act (ACA) on May 18, 2016. Also, the GIB has final authority over the Uniform Benefits' health insurance coverage provisions, under Wis. Stat. § 40.03(6) and Wis. Admin. Code § ETF 10.20.

To remain current on employee benefits law and policy and industry-wide standards, Secretary Conlin subscribes to many different publications and email updates, which he reviews on a daily basis. He also maintains memberships in multiple professional organizations.

The following is a non-exhaustive list of specific actions taken by ETF and Secretary Conlin to review the Uniform Benefits coverage exclusion at issue in this case:

- On May 18, 2016, HHS issued the final rule on the Patient Protection and Affordable Care Act Section 1557 provision on nondiscrimination in health programs and activities. ETF's OSHP staff and ETF attorneys reviewed the final rule.

- Subject to and without waiving the attorney-client privilege, on May 26, 2016, Secretary Conlin requested a legal opinion from ETF's attorneys on the application of the HHS rule to ETF. On May 29, 2016, ETF attorneys responded to Secretary Conlin's request.
- Subject to and without waiving the attorney-client privilege, on June 1, 2016, ETF attorneys offered legal analysis to OSHP on the application of the HHS rule to ETF.
- Subject to and without waiving the attorney-client privilege, on June 8, 2016, ETF attorneys communicated to Secretary Conlin their legal analysis regarding the application of the HHS rule to ETF.
- On June 15, 2016, OSHP contacted all health plans participating in the State of Wisconsin Group Health Insurance Program to inform them that, in order to comply with the HHS rule, ETF intended to recommend to GIB that the Uniform Benefits exclusion regarding procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment, be removed. OSHP further informed the health plans that ETF intended to recommend to GIB that procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment should be covered under the Uniform Benefits, when medically necessary.

- Prior to the July 12, 2016, Group Insurance Board (GIB) meeting, OSHP drafted a memo entitled “Guidelines Contract and Uniform Benefit Changes for 2017” and dated June 22, 2016. Secretary Conlin reviewed that memo prior to it being finalized and participated in a meeting on July 6th at which the memo was discussed.
- Secretary Conlin attended the July 12, 2016 GIB meeting.
- Subject to and without waiving the attorney-client privilege, on July 26, 2016, ETF attorneys provided Secretary Conlin an update on the status of litigation in related cases and an article that appeared that day in the Milwaukee Journal/Sentinel on the filing of an EEOC complaint by the ACLU on behalf of Shannon Andrews. (See <https://www.jsonline.com/story/news/politics/2016/07/26/transgender-researcher-files-discrimination-complaint/87604452/>)
- Subject to and without waiving the attorney-client privilege, on August 9, 2016, Secretary Conlin requested an update from ETF attorneys on the status of Dr. Andrews EEOC complaint.
- On August 10, 2016, Secretary Conlin received, reviewed and gave feedback on a memo from the Wisconsin Department of Justice (DOJ) entitled “ETF’s Proposed Revisions to Uniform Benefits Provisions Regarding “Gender Identity” Health Services.”

- Subject to and without waiving the attorney-client privilege, on August 10, 2016, ETF attorneys provided a legal case update to Secretary Conlin. That day, Secretary Conlin sought a legal opinion from ETF attorneys based on the update provided.
- Subject to and without waiving the attorney-client privilege, ETF's OLS drafted a memo entitled "Uniform Benefits Provisions Related to Sex Discrimination" and dated August 11, 2016. Secretary Conlin reviewed and provided feedback on that memo prior to it being finalized.
- Subject to and without waiving the attorney-client privilege, on August 11, 2016, Secretary Conlin participated in a meeting to discuss the DOJ memo and the memo from ETF's OLS.
- Secretary Conlin attended the August 16, 2016, GIB meeting.
- Subject to and without waiving the attorney-client privilege, on August 18, 2016, Secretary Conlin discussed the coverage exclusion at issue in this case with ETF attorneys.
- Subject to and without waiving the attorney-client privilege, on August 29, 2016, ETF attorneys provided Secretary Conlin with a legal case update and analysis of sex discrimination cases. That day, Secretary Conlin discussed that update with them.

- Subject to and without waiving the attorney-client privilege, on August 31, 2016, ETF attorneys gave Secretary Conlin an update on other health plan exclusions similar to the one at issue in this case.
- On December 8, 2016, Secretary Conlin prepared for the upcoming December 13, 2016, GIB meeting. On December 9, 2016, Secretary Conlin participated in a meeting at which the HHS nondiscrimination rule was discussed.
- Subject to and without waiving the attorney-client privilege, on December 12, 2016, ETF attorneys updated Secretary Conlin on the status of ACA Section 1557 litigation. That day, Secretary Conlin discussed that update with them.
- Prior to the December 13, 2016 GIB meeting, Secretary Conlin reviewed the December 8, 2016 memo entitled “Discussion and Consideration of 2017 Uniform Benefits—HHS Nondiscrimination Rule,” written by OSHP and the attachments to that memo. Secretary Conlin offered feedback on that memo before it was finalized.
- Secretary Conlin attended the December 13, 2016 GIB meeting.
- On or about December 28, 2016, Department of Administration Secretary Scott Neitzel contacted Secretary Conlin regarding scheduling a GIB meeting to reconsider the coverage exclusion at issue

in this case. Either later that day, or early the following day, GIB Chair Mike Farrell contacted Secretary Conlin to schedule that meeting.

- Subject to and without waiving the attorney-client privilege, on December 28 and 29, 2016, Secretary Conlin prepared for the December 30, 2016, GIB meeting, in consultation with ETF attorneys and OSHP.
- Prior to the December 30, 2016 GIB meeting, Secretary Conlin reviewed the December 29, 2016 memo entitled “2017 Uniform Benefits and Services Related to Gender Reassignment or Sexual Transformation—HHS Nondiscrimination Rule,” and offered his input.
- Secretary Conlin attended the December 30, 2016, GIB meeting, and was present when the GIB announced that the exclusion at issue in this case would be reinstated after four contingencies were met. One of those contingencies was the issuance of an injunction against enforcement of the HHS rule on nondiscrimination in health programs and activities.
- On December 31, 2016, a federal judge in Texas issued an injunction barring enforcement of the HHS rule. Subject to and without waiving the attorney-client privilege, Secretary Conlin reviewed that injunction and consulted with ETF attorneys.

- Subject to and without waiving the attorney-client privilege, between December 31, 2016 and January 29, 2017, Secretary Conlin met with ETF attorneys and OSHP leadership on multiple occasions to discuss the coverage exclusion at issue in this case.
- Subject to and without waiving the attorney-client privilege, on January 30, 2017, Secretary Conlin wrote a memo to the GIB, in consultation with ETF attorneys and OSHP, detailing the contingencies set by the GIB at the December 30, 2016 meeting, and reporting that those contingencies had been met.
- On January 31, 2017, Secretary Conlin, OLS, and OSHP, after consultation with the GIB chair, issued a 2017 health plan contract amendment to all participating health plans to reinstate the benefits exclusion, effective February 1, 2017.
- Secretary Conlin attended the February 8, 2017, GIB meeting; the health plan contract amendment was part of the GIB meeting materials.
- Subject to and without waiving the attorney-client privilege, on May 9, 2017, ETF attorneys updated Secretary Conlin on the status of litigation regarding ACA Section 1557 regulations.

- Subject to and without waiving the attorney-client privilege, on July 31, 2017, ETF attorneys provided Secretary Conlin with an update on the status of related cases.
- Subject to and without waiving the attorney-client privilege, on October 5, 2017, ETF attorneys updated Secretary Conlin on the status of ACA Section 1557 litigation.

INTERROGATORY NO. 11: Identify and describe any actions taken by Secretary Conlin to remediate any arbitrary discrimination resulting from the Gender Confirmation Treatment Exclusion, consistent with his obligations under Wis. Stat. § 15.04(1)(g).

RESPONSE TO INTERROGATORY NO. 11: Secretary Conlin objects that the phrase “consistent with his obligations under Wis. Stat. § 15.04(1)(g)” is vague and ambiguous. Secretary Conlin further objects that this Interrogatory assumes based on facts not in evidence that “arbitrary discrimination” occurred. Subject to and without waiving these objections, Secretary Conlin responds as follows:

See the response to Interrogatory No. 10. Consistent with that response, Secretary Conlin was directly involved in ETF’s recommendation that the exclusion at issue in this case be removed from the Uniform Benefits.

INTERROGATORY NO. 12: Identify all persons with knowledge of the genesis, formulation and adoption of the Gender Confirmation Treatment Exclusion as it existed prior to June 2016.

RESPONSE TO INTERROGATORY NO. 12: The State Defendants object that the phrase “genesis, formulation and adoption of the Gender Confirmation Treatment Exclusion as it existed prior to June 2016” is vague and ambiguous. Subject to and without waiving that objection, the State Defendants respond as follows:

With respect to ETF, Tom Korpady (Division of Insurance Services Administrator), and Bill Kox (Health Benefits & Insurance Plans Bureau Director), are former ETF employees who may have knowledge regarding the coverage exclusion at issue in this case, as it existed prior to June 2016.

With respect to the other State Defendants, they have no relevant knowledge of the coverage exclusion at issue in this case as it existed before June 2016.

INTERROGATORY NO. 13: Identify all persons with knowledge of the genesis, formulation and adoption of the proposal to eliminate the Gender Confirmation Treatment Exclusion from state employee health benefits plans beginning in 2017.

RESPONSE TO INTERROGATORY NO. 13: The State Defendants object that the phrase “genesis, formulation and adoption of the proposal to eliminate the Gender Confirmation Treatment Exclusion from state employee health benefits plans beginning in 2017” is vague and ambiguous. Subject to and without waiving that objection, the State Defendants respond as follows:

With respect to ETF, Robert Conlin (ETF Secretary), John Voelker (ETF Deputy Secretary), Pamela Henning (ETF Assistant Deputy Secretary), Lisa Ellinger (Director of the Office of Strategic Health Policy), Arlene Larson (Manager of Federal Health Programs & Policy), Tara Pray (Member Engagement and Communication Leadworker), Sara Brockman (GIB liaison), David Nispel (General Counsel), and Diana Felsmann (Attorney) have knowledge regarding the proposal to eliminate the coverage exclusion at issue in this case. ETF is aware that Department of Administration Secretary Scott Neitzel may also have knowledge responsive to this Interrogatory.

With respect to GIB, board members Michael Farrell, Stacey Rolston, Herschel Day, Terri Carlson, Bonnie Cyganek, Charles Grapentine, Michael Heifetz, Theodore Neitzke, Daniel Schwartz, Nancy Thompson, J.P. Wieske, and Bob Ziegelbauer have knowledge regarding the proposal to eliminate the coverage exclusion at issue in this case.

GIB is also aware that then-Deputy Attorney General Andrew Cook, in an August 10, 2016, memorandum, and Department of Justice Deputy Administrator Kevin Potter and Assistant Attorney General Colin Roth, at GIB meetings on December 13 and December 30, 2016, delivered legal analysis regarding the applicability of the Affordable Care Act and federal

regulations promulgated thereunder to the coverage exclusion at issue in this case.

With respect to the other State Defendants, they have no relevant knowledge regarding the proposal to eliminate the coverage exclusion at issue in this case.

INTERROGATORY NO. 14: Identify all persons with knowledge of the genesis, formulation and adoption of the proposal to reinstate the Gender Confirmation Treatment Exclusion in state employee health benefits plans beginning in February 2017.

RESPONSE TO INTERROGATORY NO. 14: The State Defendants object that the phrase “genesis, formulation and adoption of the proposal to reinstate the Gender Confirmation Treatment Exclusion in state employee health benefits plans beginning in February 2017” is vague and ambiguous. Subject to and without waiving that objection, the State Defendants respond as follows:

With respect to ETF, Robert Conlin (ETF Secretary), John Voelker (ETF Deputy Secretary), Pamela Henning (ETF Assistant Deputy Secretary), Lisa Ellinger (Director of the Office of Strategic Health Policy), Arlene Larson (Manager of Federal Health Programs & Policy), Tara Pray (Member Engagement and Communication Leadworker), Sara Brockman (GIB liaison), David Nispel (General Counsel), and Diana Felsmann (Attorney) have knowledge regarding the proposal to eliminate the coverage exclusion at

issue in this case. ETF is aware that Department of Administration Secretary Scott Neitzel may also have knowledge responsive to this Interrogatory.

With respect to GIB, board members Michael Farrell, Stacey Rolston, Herschel Day, Terri Carlson, Bonnie Cyganek, Charles Grapentine, Michael Heifetz, Theodore Neitzke, Daniel Schwartz, Nancy Thompson, J.P. Wieske, and Bob Ziegelbauer, as well as Waylon Hurlburt, a temporary GIB member by designee, have knowledge regarding the proposal to reinstate the coverage exclusion at issue in this case.

GIB is also aware that then-Deputy Attorney General Andrew Cook, in an August 10, 2016, memorandum, and Department of Justice Deputy Administrator Kevin Potter and Assistant Attorney General Colin Roth, at GIB meetings on December 13 and December 30, 2016, delivered legal analysis regarding the applicability of the Affordable Care Act and federal regulations promulgated thereunder to the coverage exclusion at issue in this case.

With respect to the other State Defendants, they have no relevant knowledge regarding the proposal to reinstate the coverage exclusion at issue in this case.

INTERROGATORY NO. 15: To the extent that any of Plaintiffs' Requests for Admission is denied or qualified in any way such that your answer is anything other than an unqualified admission, set forth in detail for each such denial or qualification all factual bases for the denial or qualification, and identify all documents that support in any way the refusal to admit unequivocally, together with the identity of the custodian(s) of any such document(s).

RESPONSE TO INTERROGATORY NO. 15:

Request for Admission No. 2: Under Wis. Stat. ch. 40, ETF is the state entity with the authority and responsibility to administer various benefits provided to state employees, including health insurance. The University of Wisconsin's human resources departments receive benefits information from ETF and provide that information to University employees. Those human resources departments also provide information related to employee benefits elections to ETF.

Request for Admission No. 4: See response to Request for Admission No. 2.

Request for Admission No. 5: See response to Request for Admission No. 2.

Request for Admission No. 6: Wisconsin Stat. ch. 36 does not assign any personal responsibility to the President of the University Wisconsin System, in either an individual or official capacity, to offer health insurance plans to University employees. Moreover, see response to Request for Admission No. 2.

Request for Admission No. 7: Wisconsin Stat. ch. 36 does not assign any personal responsibility to the Chancellor of a University Wisconsin

institution, in either an individual or official capacity, to offer health insurance plans to University employees. Moreover, see response to Request for Admission No. 2.

Request for Admission No. 8: See response to Request for Admission No. 2.

Request for Admission No. 9: Wisconsin Stat. ch. 36 does not assign any personal responsibility to the Dean of the University of Wisconsin School of Medicine and Public Health, in either an individual or official capacity, to offer health insurance plans to School of Medicine employees. Moreover, see response to Request for Admission No. 2.

Request for Admission No. 10: The University of Wisconsin is not a separate, suable entity under state law.

Request for Admission No. 11: The School of Medicine is not a separate, suable entity under state law.

Request for Admission No. 12: GIB is an “attached board” to ETF pursuant to Wis. Stat. §§ 15.03 and 15.165(2) and with the authority and responsibilities described in Wis. Stat. § 40.03(6).

Request for Admission No. 14: GIB has 11 board members, but they are not classified as employees. GIB is not an agent of ETF.

Request for Admission No. 16: The June 22, 2016, memorandum referenced in this Request for Admission speaks for itself. The characterization provided in this Request is not complete and accurate.

Request for Admission No. 18: GIB has statutory authority and responsibility with respect to state employees' group health insurance plans under Wis. Stat. ch. 40 including, for example, Wis. Stat. §§ 40.03(6), 40.51, and 40.52. Those statutes speak for themselves.

Request for Admission No. 19: See the response to Request for Admission No. 18.

Request for Admission No. 20: ETF and its Secretary's statutory authority and responsibility with respect to state employees' group health insurance plans is set forth in Wis. Stat. ch. 40 including, for example, Wis. Stat. §§ 40.03(1)–(2); those statutes speak for themselves.

Request for Admission No. 21: See the response to Request for Admission No. 20.

Request for Admission No. 22: See the response to Request for Admission No. 20.

Request for Admission No. 23: See the response to Request for Admission No. 20.

Request for Admission No. 25: Wisconsin Stat. § 40.03(6)(a)1. specifies that GIB, not ETF or its Secretary, “[m]ay, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter.”

Request for Admission No. 26: The January 30, 2017, memorandum referenced in this Request speaks for itself. The characterization provided in this Request is not complete and accurate.

**SPECIFIC OBJECTIONS AND RESPONSES TO
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

The State Defendants hereby incorporate the General Objections described above into each response below, as if fully restated therein.

REQUEST FOR PRODUCTION NO. 1: Any and all documents that you contend support your answers to Plaintiffs' First Interrogatories or Plaintiffs' First Requests for Admission or that concern, refer or relate to those answers, including, but not limited to, any document referred to or relied upon in any answer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law, (including Wis. Stat. §§ 51.30 and 146.82, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under the Family Educational Rights and Privacy Act (FERPA), or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 2: Any and all documents relating to Alina Boyden and Shannon Andrews, including, but not limited to, documents related to their employment by the University of Wisconsin,

their state employee health insurance coverage, and their requests for coverage for medical treatment for gender dysphoria and gender transition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: The State Defendants object that this request is overbroad, unduly burdensome, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, the State Defendants respond as follows:

The State Defendants will produce documents responsive to this Request that are also relevant to the coverage exclusion at issue in this case, and that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law, (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under the FERPA, or any other applicable privilege. Records containing private health care information and student records regarding the Plaintiffs will be produced upon receipt of an appropriate signed authorization. Further, the Board of Regents identifies the information located at <https://www.wisconsin.edu/ohrwd/benefits/health/>.

REQUEST FOR PRODUCTION NO. 3: Any and all documents related to the state employee health plan's coverage of procedures, services, and supplies related to "surgery and sex hormones associated with gender reassignment."

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: The State Defendants object that this request is overbroad, unduly burdensome,

disproportionate to the needs of the case, not reasonably calculated to lead to the discovery of admissible evidence, vague, and ambiguous. Subject to and without waiving this objection, the State Defendants respond as follows:

The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law, (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 4: Any and all documents related to the decision to exclude state employee health insurance coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: The State Defendants object that this request is overbroad, unduly burdensome, disproportionate to the needs of the case, not reasonably calculated to lead to the discovery of admissible evidence, vague, and ambiguous. Subject to and without waiving this objection, the State Defendants respond as follows:

The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462

(codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 5: Any and all documents related to the decisions to re-evaluate, end, and reinstate the exclusion of state employee health insurance coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: The State Defendants object that this request is overbroad, unduly burdensome, disproportionate to the needs of the case, not reasonably calculated to lead to the discovery of admissible evidence, vague, and ambiguous. Subject to and without waiving this objection, the State Defendants respond as follows:

The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege. Further information regarding GIB’s decision is available at http://etf.wi.gov/boards/agendas_gib.htm.

REQUEST FOR PRODUCTION NO. 6: Any and all documents relating to medical treatment for gender transition, gender dysphoria, gender identity disorder, and transsexualism, and the medical necessity of that treatment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The State Defendants object that this Request is overbroad, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. The State Defendants further object that this Request calls for the production of private health care information that is confidential and cannot be disclosed under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)). Subject to and without waiving this object, the State Defendants respond as follows:

The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege. The defendants affiliated with the University of Wisconsin will not collect and produce documents created by University of Wisconsin professors, researchers, and other employees related to research on gender dysphoria.

REQUEST FOR PRODUCTION NO. 7: Any and all documents relating to requests for coverage by Wisconsin state employees for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: The State Defendants object that this Request is overbroad, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. The State Defendants further object that this Request calls for the production of private health care information that is confidential and cannot be disclosed under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)). Subject to and without waiving this object, the State Defendants respond as follows:

Responsive records containing private health care information and student records for Plaintiffs will be produced upon receipt of an appropriate signed medical authorization.

REQUEST FOR PRODUCTION NO. 8: Any and all documents relating to state employee insurance coverage for breast augmentation (augmentation mammoplasty), vaginoplasty, penectomy, bilateral orchiectomy, clitoroplasty, urethroplasty, labiaplasty, perineoplasty, subcutaneous mastectomy, hysterectomy, ovariectomy, metoidioplasty, phalloplasty, vaginectomy, or scrotoplasty (or any medical services related to these procedures) for any medical conditions other than gender dysphoria or gender identity disorder or for a purpose other than “gender reassignment,” including, but not limited to, post-oncologic reconstruction, post-traumatic reconstruction, post-infectious reconstruction, or reconstruction of congenital defects or anomalies.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: The State Defendants object that this Request is overbroad, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of

admissible evidence. The State Defendants further object that this Request calls for the production of private health care information that is confidential and cannot be disclosed under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)). Subject to and without waiving this object, the State Defendants respond as follows:

Responsive records containing private health care information and student records for Plaintiffs will be produced upon receipt of an appropriate signed medical authorization.

REQUEST FOR PRODUCTION NO. 9: Any and all documents relating to state employee insurance coverage for hormonal therapies or treatments for any medical conditions other than gender dysphoria or gender identity disorder, or for a purpose other than “gender reassignment,” including, but not limited to, cancer, post-menopausal conditions, and sexual dysfunction.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: The State Defendants object that this Request is overbroad, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. The State Defendants further object that this Request calls for the production of private health care information that is confidential and cannot be disclosed under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R.

pts. 160, 164)). Subject to and without waiving this object, the State Defendants respond as follows:

Responsive records containing private health care information and student records for Plaintiffs will be produced upon receipt of an appropriate signed medical authorization.

REQUEST FOR PRODUCTION NO. 10: Any and all documents relating to the relationship between ETF and GIB, including, but not limited to, all communications between ETF and GIB for the period between January 2012 and the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: ETF and GIB object that this Request is overbroad, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. ETF and GIB further object that the phrase “the relationship between ETF and GIB” is vague and ambiguous. Subject to and without waiving these objections, the State Defendants respond as follows:

ETF and GIB will produce communications since January 1, 2016, related to the coverage exclusion at issue in this case that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 11: Any and all communications between ETF and GIB relating to insurance coverage for

gender dysphoria, gender identity disorder, gender transition, and “gender reassignment.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: ETF and GIB will produce communications since January 1, 2016, responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 12: Any and all documents relating to ETF’s responsibility for health insurance coverage, including, but not limited to, its responsibility to provide oversight for all of ETF and to hear appeals from denials of coverage.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: ETF objects that the phrase “ETF’s responsibility for health insurance coverage” is vague and ambiguous. Subject to and without waiving that objection, ETF responds as follows:

ETF hereby identifies the statutory and administrative provisions located at Wis. Stat. §§ 40.02(25)(b), 40.03(1)–(2), and 40.51, Wis. Admin. Code § ETF 10.20 and ch. 11, and the health insurance fact sheet available at <http://etf.wi.gov/publications/et8902.pdf>.

REQUEST FOR PRODUCTION NO. 13: Any and all documents relating to ETF’s role in studying, reviewing, administering, enforcing, facilitating, communicating, transmitting, or contracting related to the

exclusion of state employee health insurance coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment”; the decision to re-evaluate and end this exclusion; and the reinstatement of the exclusion in or about December 2016 and January 2017.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: ETF will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege. Further, ETF identifies the information located at <https://etfonline.wi.gov/etf/internet/RFP/HealthBeneAdminRFP1/index.html>.

REQUEST FOR PRODUCTION NO. 14: Any and all documents relating to the ETF Secretary’s role related to the exclusion of state employee health insurance coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment”; the decision to re-evaluate and end this exclusion; and the reinstatement of the exclusion in or about December 2016 and January 2017.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: ETF and Secretary Conlin will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 15: Any and all documents relating to the relationship between the ETF Secretary and GIB, including, but not limited to, all communications between the ETF Secretary and GIB for the period between January 2012 and the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: Secretary Conlin and GIB object that this Request is overbroad, disproportionate to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. Secretary Conlin and GIB further object that the phrase “the relationship between the ETF Secretary and GIB” is vague and ambiguous. Subject to and without waiving these objections, Secretary Conlin and GIB respond as follows:

Secretary Conlin and GIB will produce communications since January 1, 2016, related to the coverage exclusion at issue in this case that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 16: Any and all communications between the ETF Secretary and GIB relating to insurance coverage for gender dysphoria, gender identity disorder, gender transition, and “gender reassignment.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Secretary Conlin and GIB will produce communications since January 1, 2016, responsive to this Request that are not subject to the attorney-client

privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 17: Any and all documents relating to the ETF Secretary’s responsibility for health insurance coverage, including, but not limited to, the ETF Secretary’s responsibility to plan, direct, coordinate and execute the functions vested in the department; and to promulgate rules required for the administration of the group health insurance plans.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Secretary Conlin objects that the phrase “responsibility for health insurance coverage” is vague and ambiguous. Subject to and without waiving that objection, Secretary Conlin responds as follows:

Secretary Conlin hereby identifies the statutory provisions located at Wis. Stat. § 40.03(2), including Wis. Stat. § 40.03(2)(f).

REQUEST FOR PRODUCTION NO. 18: Any and all documents relating to the ETF Secretary’s responsibility and exercise of the ETF’s responsibility to determine whether there is any arbitrary discrimination in health insurance policies and take remedial action relating to it.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Secretary Conlin will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30

and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 19: Any and all documents relating to the role and responsibility of the Board of Regents, Cross, Blank, and Golden to provide health insurance coverage to state employees.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: The Board of Regents, Raymond Cross, Rebecca Blank, and Robert Golden are not aware of any documents in their possession responsive to this request.

REQUEST FOR PRODUCTION NO. 20: Any and all documents relating to the role and responsibility of ETF and GIB to provide health insurance to the employees of the Board of Regents.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: ETF and GIB object that the phrase “role and responsibility of ETF and GIB to provide health insurance to the employees of the Board of Regents” is vague and ambiguous. Subject to and without waiving this objection, ETF and GIB respond as follows:

ETF and GIB hereby identify the statutory and administrative provisions located at Wis. Stat. §§ 40.02(25)(b), 40.03(1)–(2), and 40.51, Wis. Admin. Code § ETF 10.20 and ch. 11, and the health insurance fact sheet available at <http://etf.wi.gov/publications/et8902.pdf>.

REQUEST FOR PRODUCTION NO. 21: Any and all documents tending to show what, if any, financial or economic effect the State of Wisconsin and/or its taxpayers would experience, both positive and negative, if the State of Wisconsin provided health insurance coverage to state

employees for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 22: Any and all documents related to the number, or estimates of the number, of State of Wisconsin employees with gender dysphoria or gender identity disorder and the number of those employees who have sought or will seek State of Wisconsin insurance coverage for gender transition and/or for treatment of gender dysphoria or gender identity disorder.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22: The State Defendants object that this Request calls for the production of private health care information that is confidential and cannot be disclosed under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)). Subject to and without waiving this object, the State Defendants respond as follows:

Responsive records containing private health care information and student records for Plaintiffs will be produced upon receipt of an appropriate signed medical authorization.

REQUEST FOR PRODUCTION NO. 23: Any and all documents related to the number, or estimates of the number, of State of Wisconsin employees who are transgender and the number of those employees who have sought or will seek State of Wisconsin insurance coverage for treatment for gender transition, gender dysphoria or gender identity disorder.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23: The State Defendants object that this Request calls for the production of private health care information that is confidential and cannot be disclosed under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)). Subject to and without waiving this object, the State Defendants respond as follows:

The State Defendants are not aware of any documents in their possession responsive to this request.

REQUEST FOR PRODUCTION NO. 24: Any and all documents related to the cost of medical treatment for gender transition, gender dysphoria, or gender identity disorder.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24: The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

REQUEST FOR PRODUCTION NO. 25: Any and all documents concerning, referring, or relating to the State funds allocated for insurance coverage for state employees from 2012 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25: The State Defendants are not aware of any documents in their possession responsive to this request.

REQUEST FOR PRODUCTION NO. 26: Any and all documents concerning, referring, or relating to projections, budgets, and estimates related to insurance coverage for state employees from 2012 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26: The State Defendants are not aware of any documents in their possession responsive to this request.

REQUEST FOR PRODUCTION NO. 27: Any and all documents concerning, referring, or relating to projections, budgets, and estimates related to insurance coverage for gender transition, gender dysphoria, or gender identity disorder from 2012 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27: The State Defendants will produce documents responsive to this Request that are not subject to the attorney-client privilege, privileges related to private health care information under state and federal law (including Wis. Stat. §§ 51.30 and 146.82, HIPAA, and 65 Fed. Reg. 82, 462 (codified at 45 C.F.R. pts. 160, 164)), privileges under FERPA, or any other applicable privilege.

Dated January 16, 2018 (original responses), April 20, 2018 (supplemental response).

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

/s/ Colin T. Roth
COLIN T. ROTH
Assistant Attorney General
State Bar #1103985

STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

JODY J. SCHMELZER
Assistant Attorney General
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schmelzerjj@doj.state.wi.us

VERIFICATION OF INTERROGATORY RESPONSES

I, Robert J. Conlin, Secretary of the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 1, 4, 5, 10, 11, 12, 13, and 14 are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 01/22/2018



ROBERT J. CONLIN
Secretary, State of Wisconsin Department of
Employee Trust Funds

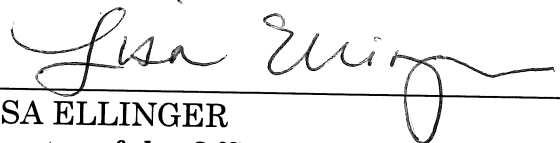
On his own behalf and on behalf of
Defendant State of Wisconsin Department of
Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Lisa Ellinger, Director of the Office of Strategic Health Policy for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 12, 13, and 14 are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1/18/18



LISA ELLINGER
Director of the Office of Strategic Health
Policy, State of Wisconsin Department of
Employee Trust Funds

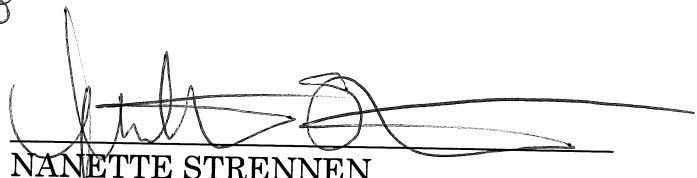
On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Nanette Strennen, Financial Management Supervisor for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing response regarding Interrogatory No. 7 is true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Jan. 18, 2018



NANETTE STRENNEN
Financial Management Supervisor, State of
Wisconsin Department of Employee Trust
Funds

On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Diana Felsmann, Attorney for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 10 and 11 are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 4/18/18



DIANA FELSMANN
Attorney, State of Wisconsin Department of
Employee Trust Funds

On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, David Nispel, General Counsel for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 10 and 11 are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1/18/18



DAVID NISPEL
General Counsel, State of Wisconsin
Department of Employee Trust Funds

On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Daniel Hayes, Attorney for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 8 and 9 are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 18, 2018



DANIEL HAYES

Attorney, State of Wisconsin Department of
Employee Trust Funds

On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Arlene Larson, Manager of Federal Health Programs & Policy for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing response regarding Interrogatory No. 6 is true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1/18/18



ARLENE LARSON

Manager of Federal Health Programs &
Policy, State of Wisconsin Department of
Employee Trust Funds


On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Raymond W. Cross, President of the University of Wisconsin System, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 2, 3, 8, 9, 12, 13, 14, and 15 (Requests for Admission 27 and 28) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1-19-18




RAYMOND W. CROSS
President, University of Wisconsin
System

VERIFICATION OF INTERROGATORY RESPONSES

I, Jessica Lathrop, Executive Director and Corporate Secretary for the Board of Regents of the University of Wisconsin System, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 2, 3, 8, 9, 12, 13, 14, and 15 (Requests for Admission 27 and 28) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 19, 2018



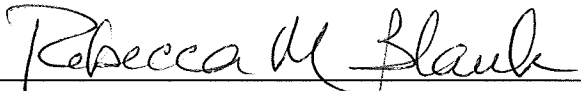
JESSICA LATHROP
Executive Director and Corporate Secretary,
Board of Regents of the University of
Wisconsin System

VERIFICATION OF INTERROGATORY RESPONSES

I, Rebecca M. Blank, Chancellor of the University of Wisconsin-Madison, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 2, 3, 8, 9, 12, 13, 14, and 15 (Requests for Admission 27 and 28) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Jan 22, 2018

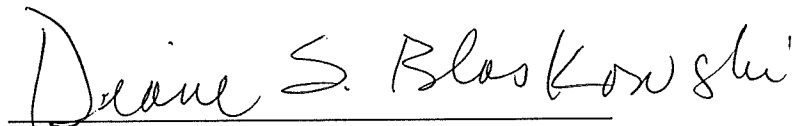

REBECCA M. BLANK
Chancellor of the University of Wisconsin-
Madison

VERIFICATION OF INTERROGATORY RESPONSES

I, Diane S. Blaskowski, Director of Employee Services for the University of Wisconsin–Madison, believe based on reasonable inquiry that the foregoing response regarding Interrogatory No. 15 (Request for Admission No. 2, second two sentences) is true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 4/19/2018



DIANE S. BLASKOWSKI
Director of Employee Services, University of
Wisconsin–Madison

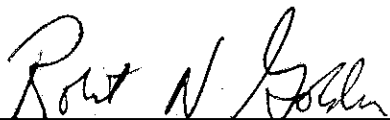
On behalf of Defendant Board of Regents

VERIFICATION OF INTERROGATORY RESPONSES

I, Robert N. Golden, M.D., Dean of the University of Wisconsin School of Medicine and Public Health, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 2, 3, 8, 9, 12, 13, 14, and 15 (Requests for Admission 27 and 28) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 1/22/18



ROBERT N. GOLDEN, M.D.
Dean, University of Wisconsin School of
Medicine and Public Health

VERIFICATION OF INTERROGATORY RESPONSES

I, Michael S. Farrell, Chairperson of the State of Wisconsin Group Insurance Board, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories Nos. 1, 2, 3, 8, 9, 12, 13, and 14 are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 23, 2018



MICHAEL S. FARRELL
Chairperson, State of Wisconsin Group
Insurance Board

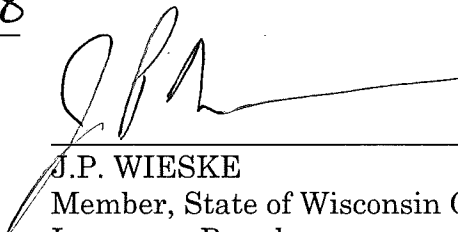
On behalf of Defendant State of Wisconsin
Group Insurance Board

VERIFICATION OF INTERROGATORY RESPONSE

I, J.P. Wieske, a member of the State of Wisconsin Group Insurance Board, believe based on reasonable inquiry that the foregoing supplemental response regarding Interrogatory No. 2 is true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 20th 2018



J.P. WIESKE
Member, State of Wisconsin Group
Insurance Board

On behalf of Defendant State of Wisconsin
Group Insurance Board

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

Case No. 17-cv-264

v.

STATE OF WISCONSIN DEPARTMENT
OF EMPLOYEE TRUST FUNDS, et al.,

Defendants.

**STATE DEFENDANTS' RESPONSES AND OBJECTIONS TO
PLAINTIFFS' SECOND SET OF REQUESTS FOR ADMISSION AND
INTERROGATORY TO STATE DEFENDANTS**

Pursuant to Federal Rules of Civil Procedure 33 and 36, Defendants State of Wisconsin Department of Employee Trust Funds, State of Wisconsin Group Insurance Board, Robert J. Conlin, Secretary of the Department of Employee Trust Funds (ETF), Board of Regents of the University of Wisconsin System, Raymond W. Cross, President of the University of Wisconsin System, Rebecca M. Blank, Chancellor of the University of Wisconsin-Madison, University of Wisconsin School of Medicine and Public Health, and Robert N. Golden, M.D., Dean of the University of Wisconsin School of Medicine and Public Health (the "State Defendants"), by their counsel, hereby object and respond to Plaintiffs Second Set of Requests for Admission and Interrogatory to State Defendants.

GENERAL OBJECTIONS

The State Defendants assert and incorporate by reference the same General Objections set forth in State Defendants' Responses and Objections to Plaintiffs' First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents and Things.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that Alina Boyden is eligible for group health insurance coverage provided by Defendants ETF and GIB because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: The State Defendants object that the term "provided by" is vague and ambiguous. Subject to and without waiving that objection, ADMIT that that Alina Boyden is eligible for State of Wisconsin Group Health Insurance Program coverage in part because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 2: Admit that Alina Boyden has received group health insurance coverage, and currently receives group health insurance coverage, provided by Defendants ETF and GIB through her employment by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: The State Defendants object that the term "provided by" is vague and ambiguous.

Subject to and without waiving that objection, ADMIT that Alina Boyden has received State of Wisconsin Group Health Insurance Program coverage, and currently receives State of Wisconsin Group Health Insurance Program coverage through her employment by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 3: Admit that Shannon Andrews is eligible for group health insurance coverage provided by Defendants ETF and GIB because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: The State Defendants object that the term “provided by” is vague and ambiguous. Subject to and without waiving that objection, ADMIT that that Shannon Andrews is eligible for State of Wisconsin Group Health Insurance Program coverage because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 4: Admit that Shannon Andrews has received group health insurance coverage, and currently receives group health insurance coverage, provided by Defendants ETF and GIB through her employment by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: The State Defendants object that the term “provided by” is vague and ambiguous. Subject to and without waiving that objection, ADMIT that Shannon

Andrews has received State of Wisconsin Group Health Insurance Program coverage, and currently receives State of Wisconsin Group Health Insurance Program coverage through her employment by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 5: Admit that Alina Boyden has received health insurance coverage, and currently receives health insurance coverage through the State of Wisconsin Group Health Insurance Program because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: ADMIT that Alina Boyden has received State of Wisconsin Group Health Insurance Program coverage, and currently receives State of Wisconsin Group Health Insurance Program coverage in part because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 6: Admit that Shannon Andrews has received health insurance coverage, and currently receives health insurance coverage through the State of Wisconsin Group Health Insurance Program because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: ADMIT.

REQUEST FOR ADMISSION NO. 7: Admit that State of Wisconsin employees who are defined as “eligible employees” under Wis. Stat. § 40.02(25)(b) may receive health insurance coverage through the State of

Wisconsin Group Health Insurance Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: ADMIT.

REQUEST FOR ADMISSION NO. 8: Admit that Alina Boyden has received health insurance coverage, and currently receives health insurance coverage, administered by the Wisconsin Department of Employee Trust Funds and the Group Insurance Board because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: The State Defendants object that the term “administered by” is vague and ambiguous. Subject to and without waiving that objection, ADMIT that Alina Boyden has received State of Wisconsin Group Health Insurance Program coverage, and currently receives State of Wisconsin Group Health Insurance Program coverage, administered by the Wisconsin Department of Employee Trust Funds in part because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 9: Admit that Shannon Andrews has received health insurance coverage, and currently receives health insurance coverage administered by the Wisconsin Department of Employee Trust Funds and the Group Insurance Board because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: The State Defendants object that the term “administered by” is vague and ambiguous. Subject to and without waiving that objection, ADMIT that Shannon Andrews has received State of Wisconsin Group Health Insurance Program coverage, and currently receives State of Wisconsin Group Health Insurance Program coverage, administered by the Wisconsin Department of Employee Trust Funds because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 10: Admit that Alina Boyden has received health insurance coverage, and currently receives health insurance coverage whose terms are set by the Wisconsin Group Insurance Board, because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: The State Defendants object that the term “terms” and the phrase “set by” are vague and ambiguous. Subject to and without waiving this objection, ADMIT that Alina Boyden has received State of Wisconsin Group Health Insurance Program (“Program”) coverage, and currently receives Program coverage, whose terms with respect to the Uniform Benefits of the Program are in part set by the Wisconsin Group Insurance Board, in part because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 11: Admit that Shannon Andrews has received health insurance coverage, and currently receives health insurance coverage whose terms are set by the Wisconsin Group Insurance Board, because she is employed by the Defendant, Board of Regents.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: The State Defendants object that the term “terms” and the phrase “set by” are vague and ambiguous. Subject to and without waiving this objection, ADMIT that Shannon Andrews has received State of Wisconsin Group Health Insurance Program (“Program”) coverage, and currently receives Program coverage, whose terms with respect to the Uniform Benefits of the Program are in part set by the Wisconsin Group Insurance Board, because she is employed by the Defendant, Board of Regents; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 12: Admit that the State of Wisconsin Group Health Insurance Program is administered by the Wisconsin Department of Employee Trust Funds and the Group Insurance Board.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: The State Defendants object that the term “administered by” is vague and ambiguous. Subject to and without waiving that objection, ADMIT that the State of Wisconsin Group Health Insurance Program is administered in part by the

Wisconsin Department of Employee Trust Funds; DENY the remainder of this request.

REQUEST FOR ADMISSION NO. 13: Admit that the terms of the State of Wisconsin Group Health Insurance Program are set by the Group Insurance Board.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: The State Defendants object that the term “terms” and the phrase “set by” are vague and ambiguous. Subject to and without waiving this objection, ADMIT that the terms with respect to the Uniform Benefits of the State of Wisconsin Group Health Insurance Program are set by the Wisconsin Group Insurance Board; DENY the remainder of this Request.

REQUEST FOR ADMISSION NO. 14: Admit that the United States District Court for the Western District of Wisconsin has subject-matter jurisdiction over this Matter.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: The State Defendants object that this Request seeks a legal conclusion without application to relevant facts.

REQUEST FOR ADMISSION NO. 15: Admit that the United States District Court for the Western District of Wisconsin has jurisdiction over this Matter pursuant to Article III of the United States Constitution; 28 U.S.C. §§ 1331, 1343; and 42 U.S.C. § 2000e-5(f)(3).

RESPONSE TO REQUEST FOR ADMISSION NO. 15: The State Defendants object that this Request seeks a legal conclusion without application to relevant facts.

REQUEST FOR ADMISSION NO. 16: Admit that the United States District Court for the Western District of Wisconsin has personal jurisdiction over Defendants, State of Wisconsin Department of Employee Trust Funds, State of Wisconsin Group Insurance Board, Robert J. Conlin, Secretary of the Department of Employee Trust Funds, Board of Regents of the University of Wisconsin System, Raymond W. Cross, President of the University of Wisconsin System, Rebecca M. Blank, Chancellor of the University of Wisconsin-Madison and Robert N. Golden, M.D., Dean of the University of Wisconsin School of Medicine and Public Health, because Defendants' principal offices are located in this District.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: ADMIT.

REQUEST FOR ADMISSION NO. 17: Admit that Venue for this Matter is appropriate in the Western District of Wisconsin under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: ADMIT.

INTERROGATORY

INTERROGATORY NO. 1: To the extent that any of Plaintiffs' Requests for Admission above is denied or qualified in any way such that your answer is anything other than an unqualified admission, set forth in detail for each such denial or qualification all factual bases for the denial or qualification, and identify all documents that support in any way the refusal to admit unequivocally, together with the identity of the custodian(s) of any such document(s).

RESPONSE TO INTERROGATORY NO. 1:

Request for Admission No. 1: The State Defendants deny that either ETF or GIB "provides" group health insurance coverage, to the best of their understanding of the term "provides." Wisconsin Stat. § 40.03(6)(a)1. provides only that GIB "shall, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter." The State Defendants further deny that Alina Boyden is eligible for group health insurance coverage solely because she is employed by the Defendant, Board of Regents, since Boyden, as a teaching assistant, still must be employed "on at least a one-third full-time basis," Wis. Stat. § 40.02(25)(b)1.-2.

Request for Admission No. 2: The State Defendants deny that either ETF or GIB “provides” group health insurance coverage, to the best of their understanding of the term “provides.” Wisconsin Stat. § 40.03(6)(a)1. provides only that GIB “shall, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter.”

Request for Admission No. 3: The State Defendants deny that either ETF or GIB “provides” group health insurance coverage, to the best of their understanding of the term “provides.” Wisconsin Stat. § 40.03(6)(a)1. provides only that GIB “shall, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter.”

Request for Admission No. 4: The State Defendants deny that either ETF or GIB “provides” group health insurance coverage, to the best of their understanding of the term “provides.” Wisconsin Stat. § 40.03(6)(a)1. provides only that GIB “shall, on behalf of the state, enter into a contract or contracts with one or more insurers authorized to transact insurance business in this state for the purpose of providing the group insurance plans provided for by this chapter.”

Request for Admission No. 5: The State Defendants deny that Alina Boyden received and receives health insurance coverage solely because she is employed by the Defendant, Board of Regents, since Boyden, as a teaching assistant, still must be employed “on at least a one-third full-time basis,” Wis. Stat. § 40.02(25)(b)1.–2.

Request for Admission No. 8: The State Defendants deny that GIB administers health insurance coverage. The State Defendants further deny that Boyden received and receives health insurance coverage solely because she is employed by the Defendant, Board of Regents, since Boyden, as a teaching assistant, still must be employed “on at least a one-third full-time basis,” Wis. Stat. § 40.02(25)(b)1.–2.

Request for Admission No. 9: The State Defendants deny that GIB administers health insurance coverage.

Request for Admission No. 10: The State Defendants deny that Boyden received and receives health insurance coverage solely because she is employed by the Defendant, Board of Regents, since Boyden, as a teaching assistant, still must be employed “on at least a one-third full-time basis,” Wis. Stat. § 40.02(25)(b)1.–2. The State Defendants further allege that certain Program contract terms aside from the Uniform Benefits (for example, premiums) are subject to negotiation between GIB and participating health plans and others are set by the Wisconsin Legislature

(for example, those regarding eligibility); such terms are not “set by” GIB, to the best of the State Defendants’ understanding of the phrase “set by.” For further detail, see Wis. Stat. §§ 40.51, 631.95, 632.746(1)–(8) and (10), 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853, 632.855, 632.867, 632.885, 632.89, 632.895(11)–(17), and 632.897.

Request for Admission No. 11: The State Defendants allege that certain Program contract terms aside from the Uniform Benefits (for example, premiums) are subject to negotiation between GIB and participating health plans and others are set by the Wisconsin Legislature (for example, those regarding eligibility); such terms are not “set by” GIB, to the best of the State Defendants’ understanding of the phrase “set by.” For further detail, see Wis. Stat. §§ 40.51, 631.95, 632.746(1)–(8) and (10), 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853, 632.855, 632.867, 632.885, 632.89, 632.895(11)–(17), and 632.897.

Request for Admission No. 12: The State Defendants deny that GIB administers health insurance coverage. The State Defendants further allege that participating health plans and the pharmacy benefits manager also administer aspects of the Wisconsin Group Health Insurance Program.

Request for Admission No. 13: The State Defendants allege that certain State of Wisconsin Group Health Insurance Program contract terms aside from the Uniform Benefits (for example, premiums) are subject to negotiation between

GIB and participating health plans and others are set by the Wisconsin Legislature (for example, those regarding eligibility); such terms are not “set by” GIB, to the best of their understanding of the phrase “set by.” For further detail, see Wis. Stat. §§ 40.51, 631.95, 632.746(1)–(8) and (10), 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853, 632.855, 632.867, 632.885, 632.89, 632.895(11)–(17), and 632.897.

Dated April 27, 2018.

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

/s/ Colin T. Roth
COLIN T. ROTH
Assistant Attorney General
State Bar #1103985

STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

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VERIFICATION OF INTERROGATORY RESPONSES

I, Michael S. Farrell, Chairperson of the State of Wisconsin Group Insurance Board, believe based on reasonable inquiry that the foregoing responses regarding Interrogatory No. 1 (Requests for Admission Nos. 1 (first sentence), 2, 3, 4, 8 (first sentence), 9, 10 (second sentence), 11, 12, and 13) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

4/26/18



MICHAEL S. FARRELL
Chairperson, State of Wisconsin Group
Insurance Board


On behalf of Defendant State of Wisconsin
Group Insurance Board

VERIFICATION OF INTERROGATORY RESPONSES

I, Eileen K. Mallow, Director of the Office of Strategic Health Policy for the State of Wisconsin Department of Employee Trust Funds, believe based on reasonable inquiry that the foregoing responses regarding Interrogatories No. 1 (Requests for Admission Nos. 1, 2, 3, 4, 5, 8 (second sentence), 10, 11, 12, and 13) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 4/27/18



EILEEN K. MALLOW
Director of the Office of Strategic Health
Policy, State of Wisconsin Department of
Employee Trust Funds

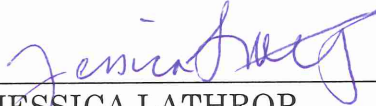
On behalf of Defendant State of Wisconsin
Department of Employee Trust Funds

VERIFICATION OF INTERROGATORY RESPONSES

I, Jessica Lathrop, Executive Director and Corporate Secretary for the Board of Regents of the University of Wisconsin System, believe based on reasonable inquiry that the foregoing responses regarding Interrogatory No. 1 (Requests for Admission Nos. 1 (second sentence), 5, 8 (second sentence), and 10 (first sentence)) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 24 April, 2015



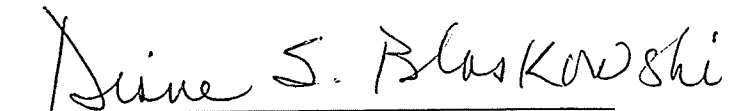
JESSICA LATHROP
Executive Director and Corporate Secretary,
Board of Regents of the University of
Wisconsin System

VERIFICATION OF INTERROGATORY RESPONSES

I, Diane S. Blaskowski, Director of Employee Services for the University of Wisconsin–Madison, believe based on reasonable inquiry that the foregoing responses regarding Interrogatory No. 1 (Requests for Admission Nos. 1 (second sentence), 5, 8 (second sentence), and 10 (first sentence)) are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 4/27/2018



DIANE S. BLASKOWSKI

Director of Employee Services, University of
Wisconsin–Madison

On behalf of Defendant Board of Regents

4-13-15 call w Segal
Gina created

Proposed Change	Financial Impact	Administration Impact	Member Reaction	Segal - Comments & Considerations	Segal Position
Change for 3D mammography <i>coming norm but gather more info</i>	Minimal cost	1	1	Mammography moving toward 3D; becoming the norm.	Neutral
Limit the number of Cardiac Rehabilitation visits covered per calendar year	Minimal savings	1	3	Members who have had a cardiac event should be encouraged to participate in Cardiac Rehabilitation programs	Not recommended <i>Don't</i>
Add coverage for tooth root retrieval (D7250) under Oral Surgery benefits <i>Gina med. direct</i>	Minimal cost	1	1	Although a costly surgical procedure, incidence should be low.	Neutral - defer consideration to 2017
Remove the authorization requirement for standard Corneal Transplants (prior authorization would still be necessary for artificial corneal transplant or keratoprosthesis) <i>Salma = don't own policy</i>	Minimal cost	1	1	Low impact due to low incidence; no supporting data to indicate need to change prior-authorization requirement.	Not Recommend <i>Dean = no cb</i>
Limit of 15 chiropractic visits per member and allow additional visits only when prior authorized by the health plan, up to a maximum of an additional 15 visits <i>Salma looks for a round + advice = massive, not chair</i>	Minimal cost	1	1	Typical low-end limitation is 20 visits/year. WHO data indicates excessive Chiro utilization.	Recommend - consider higher specialist copay, annual limits, etc.
Add residential coverage for needs beyond AODA for at least a limited time period (30, 60, 90 days) (e.g. an eating disorder) <i>Salma = 90 day policy</i>	Minimal cost	1	1	Residential counseling for a short period can be beneficial.	Neutral
Add specific contract language on coverage for telemedicine <i>moving clients online, E.A. 5/16 consultant key 2017</i>		3	2	Implementation and practices will vary greatly among health plans - should be considered as part of longer term strategy.	Defer consideration to 2017
Gender Reassignment <i>yes</i> - Change our "sex transformation" exclusion language to "gender reassignment" (EJF - yes) - Remove the exclusion and include benefits <i>minimal</i> - Allow transgender people to change their sex in the system w/ or w/o surgery - Allow members to select a gender other than M/F in system and on apps <i>peer staff in gender reassignment</i>	Moderate cost	2	1	If gender reassignment procedures are covered, then recommend a formal Gender Dysphoria diagnosis and limit coverage to exclude cosmetic procedures that enhance appearance. Allowing members to select gender in system and on forms is NOT recommended.	Recommend 2016 Neutral regarding benefit; however coverage should include strict pre-requisites and protocols. Do NOT recommend allowing members to select gender in system.
Add bariatric surgery coverage <i>Salma = 5-10 yr/lat</i>	Low-Moderate cost	2	1	Benefit should include typical pre-requisite testing and treatment protocols. Centers of Excellence utilization should be incented.	Recommend for 2016 or defer to 2017
Add an exclusion for the additional cost of robotic surgery <i>Salma = 5-10 yr/lat</i> <i>Does cover but limit to cost of reg surgery</i>	Minimal-low cost	1	2	Robotic surgery an emerging technology and is becoming more prevalent, but at a premium price. Efficiency and outcomes are not yet supporting the premium price. Suggest capping surgery benefits at the "non-robotic" level, or other agreed upon method to avoid the higher cost.	Neutral
Add an exclusion for the removal of skin tags <i>Salma = 5-10 yr/lat</i>	No-minimal savings	1	2		Not recommended
Add an exclusion for routine foot care <i>Salma = 5-10 yr/lat</i>	No-minimal savings	1	2		Not recommended
Modify current exclusion language on genetic testing to exclude genetic testing that is not proven to affect medical management <i>Salma = 5-10 yr/lat</i>	No-minimal savings	3	2	Practices will vary across health plans - consult Dr. Hirsch.	Not recommended, beyond required
Add clarification that therapies for developmental delays are excluded <i>Gina = will allow Dean staff</i>	No impact	1	2	Therapy for Autism is more commonly covered, with visit and age limitations. Should be considered in conjunction with "Remove exclusion and include coverage for rehabilitative services."	Neutral - pending further discussion





STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax (608) 267-4549
<http://etf.wi.gov>

July 9, 2014

PAMELA OLIVER
8128 SEWELL SOCIAL SCIENCE
1180 OBSERVATORY DR
MADISON WI 53706-1393

Dear Ms. Oliver:

Thank you for your email message concerning gender reassignment coverage under the health insurance program offered to state employees and their eligible dependents. I apologize for the delayed response.

You indicated your concern that the exclusion for sex transformation surgery and hormones related to such treatments has been used by health plans as a broad denial of care for those who have incurred such a surgery. We are following up with our participating health plans to ensure that the exclusion is being appropriately applied.

We want to let you know that the process for changing the health insurance contract effective in 2016 will begin toward the end of this year and conclude in May 2015. At the time you contacted us, we were in the final stages of reviewing the contract recommendations for 2015 and there was not sufficient time to add this item to the process. We will of course, add this to the list of proposals to be discussed next year. In the meantime, if it is determined that either an individual plan is improperly applying the exclusion or the exclusion itself is prohibited by the Affordable Care Act (ACA), we will so advise the plan or all plans as appropriate.

You also noted in your e-mail that you felt the exclusion will inevitably become discriminatory under the Americans with Disabilities Act (ADA). We are not aware of any ruling or directive from the Equal Employment Opportunity Commission (EEOC) that requires health plans to provide such coverage. We are monitoring changes in the law under the ACA, particularly for changes relating to civil rights. In addition, we are aware of the recent Health and Human Services' appeals board decision overturning Medicare's prohibition of sex-reassignment surgery in one case on appeal. In this case, Medicare did not permit coverage of treatments related to gender reassignment, such as hormone therapy. This ruling means that Medicare will cover the surgery on a case-by-case basis.



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Pamela Oliver
July 9, 2014
Page 2

All eligible state employees and dependents do have the same access to health insurance. No employee or eligible dependent is denied the right to health insurance on the basis of any medical condition or disability even if the insurance affects people differently.

I regret that you lost a promising graduate student because of this exclusion. I hope this addresses your concerns. If you have further questions, please contact Arlene Larson of my staff at (608) 264-6624 or arlene.larson@etf.state.wi.us.

Sincerely,

Lisa Ellinger
Administrator
Division of Insurance Services

DRAFT

MINUTES

JULY 12, 2016

Group Insurance Board

State of Wisconsin



Location:

State Revenue Building – Events Room
2135 Rimrock Road, Madison, WI 53713

BOARD MEMBERS PRESENT:

Michael Farrell, Chair	Michael Heifetz
Bonnie Cyganek, Vice Chair	Stacey Rolston
Herschel Day, Secretary (via telephone)	Nancy Thompson
Terri Carlson	JP Wieske
Chuck Grapentine	Bob Ziegelbauer

BOARD MEMBERS ABSENT:

Ted Neitzke

PARTICIPATING EMPLOYEE TRUST FUNDS (ETF) STAFF:

Bob Conlin, Secretary	Office of the Secretary:
John Voelker, Deputy Secretary	Sara Brockman, Board Liaison
Office of Strategic Health Policy:	
Lisa Ellinger, Director	
Eileen Mallow, Jeff Bogardus, Sarah Bradley, Tara Pray	

OTHERS PRESENT:

ETF Budget & Procurement:	Martin Schreiber & Associates:
Rita Black-Radloff, Beth Bucaida,	Annie Early
Michael McNally, Joe Schneider	MercyCare:
ETF Department of Trust Finance:	Tracy Craker
Cindy Klimke, Bob Willett	Momentum Insurance:
ETF Information Technology Services:	Stephanie Steel
Ryan Perkins	Office of the Commissioner of Insurance:
ETF Legal Services:	Jennifer Stegall
Diana Felsmann, David Nispel	Physicians Plus:
ETF Office of Communications:	Ron Sebranek
Nancy Ketterhagen, Mark Lamkins	Securian:
	Kjirsten Elsner, Chris Schmelzer



Board	Mtg Date	Item #
GIB	8.16.16	1

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ETF Office of the Secretary: Pam Henning, Tarna Hunter, Cherylynn Wilkins	State Engineering Association: Bob Schaefer
ETF Office of Strategic Health Policy: Rachel Carabell, Sherry Etes, Roni Harper, Arlene Larson, Shayna Schomber, Joan Steele	UnitedHealth Group: Jodie Tierney
Baraboo Ambulance: Troy Snow	Unity Health Insurance: Cari Alexander
Dean Health Plan: Angie Dalton	University of Wisconsin – Madison: Deanne DeSlover, Molly Heisterkamp, SE Hutchinson
Delta Dental: Sunshine Mikulak	UW Health: Liz Melin
Department of Administration: Nicole Zimm	UW Hospital and Clinics: Anthony Dix
EPIC Life Insurance Company: Wendy Hougan	UW System Administration: LaDonna Steinert
General Public: Hickory Hurie	WEA Trust: Greg Cieslewicz
Group Health Cooperative – South Central Wisconsin: Elizabeth Dye	WisBusiness.com: Polo Rocha
Health Choice: Bob Pearson	Wisconsin Association of Health Plans: Phil Dougherty
Humana: Mary Haffenbredl	Wisconsin Health News: Tim Stumm
Legislative Audit Bureau: Emily Pape	Wisconsin Hospital Association: Joanne Alig
M3 Insurance: Tim Byrne, Nathan Janke	Wisconsin Medical Society: Chris Rasch
	WPS Arise: Carrie Helms

Bonnie Cyganek, Vice Chair, called the meeting of the Group Insurance Board (Board) to order at 9:01 a.m.

ANNOUNCEMENTS

Ms. Ellinger made the following announcements:

- JP Wieske, Deputy Commissioner of Insurance, will replace Daniel Schwartz as a member of the Board.
- Rachel Carabell has accepted the position of Strategic Health Policy Advisor with the Office of Strategic Health Policy.
- WisconsinEye was not invited to record the meeting due to the short duration of open session.

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ELECTION OF OFFICERS

MOTION: Ms. Carlson moved to nominate Michael Farrell as Chair of the Group Insurance Board. Mr. Grapentine seconded the motion, which passed unanimously on a voice vote, with Mr. Farrell abstaining.

MOTION: Mr. Grapentine moved to nominate Herschel Day as Secretary of the Group Insurance Board. Ms. Thompson seconded the motion. The motion passed unanimously on a voice vote, with Mr. Day abstaining.

Mr. Farrell assumed the duties of the Chair upon his election.

HEALTH INSURANCE

Guidelines and Uniform Benefit Changes for 2017

Ms. Pray referred the Board to the memo, Guidelines and Uniform Benefit Changes for 2017 (Ref. GIB | 7.12.16 | 3A). At the May 18, 2016 meeting, the Board approved initial Guidelines and Uniform Benefit change recommendations as presented, and granted the staff the authority to make additional technical changes as necessary.

Additional changes to the Guidelines Contract are necessary, due to the federal Department of Health and Human Services (HHS) issuing final regulations pertaining to Section 1557 of the Affordable Care Act (ACA) on May 18, 2016.

The Section 1557 regulations apply to “covered entities,” which are prohibited from discriminating on the basis of race, color, national origin, age, disability, or sex, including discrimination on the basis of gender identity.

The regulations list the following as prohibited activities:

1. Deny, cancel, limit, or refuse to issue health coverage.
2. Deny or limit a claim.
3. Impose additional cost-sharing or other limitations.
4. Deny or limit coverage or impose additional cost-sharing or other limitations for sex-specific health services provided to transgender individuals based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.
5. Categorically excluding coverage for services related to gender transition.
6. Otherwise limit services related to gender transition if the limitation would result in discrimination against a transgender individual.

After analyzing the new law, ETF's Office of Legal Services recommended two changes to bring ETF into compliance:

1. Remove the current exclusion related to benefits and services related to gender

Group Insurance Board
July 12, 2016 Open Meeting Minutes
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- reassignment or sexual transformation. Required effective date is January 1, 2017.
2. Include the federally-required nondiscrimination notification language on all significant communications related to ETF's health programs. Required effective date is October 16, 2016.

These provisions are required for covered entities, which is defined as:

- An entity that operates a health program or activity that receives federal financial assistance through HHS;
- An entity established under Title I of the ACA that administers a health program or activity, such as state-based marketplaces; or
- HHS and the programs it administers, such as the federal marketplace.

ETF's Office of Legal Services and Segal Consulting analyzed the new law and recommend that ETF consider itself a covered entity due to offering self-insured plans, providing and administering health insurance coverage, and accepting Medicare Part D subsidies.

If the changes are not adopted, ETF anticipates issues contracting with health plans, which are covered entities and as such are prohibited from contracting away nondiscrimination obligations. Secondly, the HHS Office of Civil Rights has indicated its intent to actively refer discrimination complaints to the Equal Employment Opportunity Commission, which has enforcement authority over general nondiscrimination laws, including gender discrimination.

No further substantial changes to the 2017 Guidelines Contract and Uniform Benefits are anticipated, and final change recommendations will be presented at the November 15, 2016 Board meeting.

MOTION: Ms. Carlson moved to approve the changes to the Guidelines Contract and Uniform Benefits as detailed in Attachment A, and grant ETF staff the authority to make additional technical changes necessary. Ms. Thompson seconded the motion, which passed unanimously on a voice vote.

Request for Proposals Implementation Plan Update

Ms. Ellinger referred the Board to the Requests for Proposals Implementation Plan Update memo (Ref. GIB | 7.12.16 | 3B) and provided a brief update on the development and distribution of various RFPs.

The RFP to Evaluate Self Insurance and Regional/Statewide Program Structure and the RFP for a Data Warehousing/Visual Business Intelligence Vendor were both on schedule to be released July 22, 2016, after incorporating Request for Information feedback. Vendor selection for both RFPs is scheduled to occur at the Board meeting

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on November 15, 2016. There were no pertinent updates to the Pharmacy Benefit Manager RFP.

OPTIONAL PLANS

Optional Dental Plans Rates

Ms. Mallow referred the Board to the Optional Dental Plans Rates memo (Ref. GIB | 7.12.16 | 4A) and provided a brief overview the recommended dental rates for 2017 from Anthem DentalBlue, EPIC Dental Wisconsin, and EPIC Benefits +.

MOTION: Ms. Cyganek moved to approve the proposed premium changes for existing plans, per the amended proposals, effective January 1, 2017. Ms. Thompson seconded the motion, which passed unanimously on a voice vote.

The Chair announced the Board would convene in closed session pursuant to the exemptions contained in Wis. Stat § 19.85 (1) (e) for the purpose of deliberating the potential investment of public funds and to review proposals for services for which competitive and bargaining reasons required a closed session. Staff from the Department of Employee Trust Funds, Office of the Commissioner of Insurance, the Department of Administration, and members of the proposal adjudication committee were invited to remain during the closed session.

MOTION: Ms. Cyganek moved to convene in closed session, pursuant to the exemptions contained in Wis. Stat. § 19.85 (1) (e) to deliberate or negotiate the investing of public funds or to conduct other specified public business. Ms. Thompson seconded the motion, which passed on the following roll call vote:

Members Voting Aye: Carlson, Cyganek, Day, Farrell, Grapentine, Heifetz, Rolston, Thompson, Wieske, Ziegelbauer

Members Absent: Neitzke

The Board convened in closed session at 9:32 a.m. and reconvened in open session at 12:08 p.m.

ANNOUNCEMENT OF ACTION TAKEN ON BUSINESS DELIBERATED DURING CLOSED SESSION

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Page 6

Mr. Farrell announced the Board reviewed and deliberated on RFPs for the Third Party Administration of Wellness and Disease Management Programs (RFP#ETG0005) during closed session.

Motion: Ms. Cyganek moved to grant authority to the Secretary of the Department of Employee Trust Funds to issue an intent to award the contract for Third Party Administrative Services for Wellness and Disease Management Programs to The StayWell Company, LLC, for the period of August 15, 2016 through December 31, 2018, with the potential for two (2), two (2) year extensions, subject to successful contract negotiations.

In addition, if the contract negotiations fail or extend beyond a reasonable period of time, the Secretary has the authority to issue an intent to award the contract for Third Party Administrative Services for Wellness and Disease Management Programs to Limeade. Should these negotiations fail or extend beyond a reasonable period of time with Limeade, staff recommends that the Secretary be allowed to issue an intent to award to ActiveHealth Management, Inc.

ADJOURNMENT

MOTION: Mr. Heifetz moved to adjourn the meeting. Mr. Grapentine seconded the motion, which passed unanimously on a voice vote.

The meeting adjourned at 12:15 p.m.

Date Approved: _____

Signed: _____
Herschel Day, Secretary
Group Insurance Board



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MEMORANDUM

To: Lisa Ellinger
From: Kirsten R. Schatten, ASA, MAAA
Kenneth C. Vieira, FSA, MAAA
Date: January 23, 2017
Re: Transgender Cost Estimate

Section 1557 of the ACA prohibits group health plans from discriminating on the basis of race, color, national origin, sex, age, or disability in health programs, consistent with existing federal laws, including Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and Sections 504 and 508 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990 (ADA). Group health plans and employers that accept federal funding from HHS are covered entities under the law.

The Section 1557 regulations defined discrimination on the basis of "sex" to include discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy or recovery therefrom, childbirth or related medical conditions, sex stereotyping, and gender identity. This interpretation was challenged by the plaintiffs as being an impermissible definition of the term "sex."

In *Franciscan Alliance, Inc. v Burwell, et al*, several plaintiffs challenged regulations issued by the Department of Health and Human Services (HHS) implementing Section 1557 of the Affordable Care Act (ACA). Plaintiffs included eight states (Texas, Wisconsin, Nebraska, Kansas, Louisiana, Arizona, Mississippi, and the Commonwealth of Kentucky) and three private health care providers. On December 31, 2016, Judge Reed O'Connor of the US District Court for the Northern District of Texas issued a nationwide preliminary injunction enjoining HHS from enforcing the regulation's prohibition against discrimination on the basis of gender identity or termination of pregnancy.

This brief memo is focused on the calculation of potential cost impact to the State of Wisconsin Group Health Insurance Plan for adding transgender dysphoria benefits in 2017. Please note that there is a lack of information and data to provide specific information on estimated cost to the Plan. Therefore, we have provided a range of estimates based on potential utilization information gathered from research and treatment cost estimates from BCBS. Please also note there are wide variations in some of these studies, and past experience from various counties that have provided coverage long enough to have data to review have shown the prior estimates to be overstated.



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Lisa Ellinger
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Key Assumptions

Three key assumptions drive our cost estimates: prevalence of transgender members, percentage of those who seek benefits (including surgery) and the cost of the various treatment options.

Prevalence – According to the Centers for Disease Control and Prevention (CDC) 2015 Behavioral Risk Factor Surveillance System (BRFSS), approximately 0.58% of adults in the United States self-identify as transgender. This has increased slightly from 2014 & 2013.

The Williams Institute in June of 2016 published a paper entitled "How Many Adults Identify as Transgender in the United States?" which goes a little further by drilling down on prevalence by state and also providing ranges. This paper estimated a prevalence range of 0.31% to 0.62% for Wisconsin adults ages 18-64.

Percentage Who Seek Benefits – The number of transgender people seeking benefits is difficult to predict since a new benefit may alter past patterns. One study was published by Olyslager, F. & Conway, L. (September 2007) entitled "On the Calculation of the Prevalence of Transsexualism." This paper was presented at the WPATH 20th International Symposium, Chicago, Illinois. This study from 2007 estimates that, of those who identify as transgender, between 0.1% and 0.5% have taken some steps to transition from one gender to another.

The State of Wisconsin Group Health Insurance Plan membership from age 18 through 64 is approximately 159,000. Applying the prevalence and utilization assumptions above, we would expect 2 to 5 members to use transgender benefits.

For those who seek benefits, the vast majority of cost comes from members choosing to have gender reassignment surgery. There are a couple of sources we found (Mohammed A. Memon, MD; February 22, 2016; "Gender Dysphoria and Transgenderism: Epidemiology" Medscape, as well as HealthResearchFunding.Org) that site prevalence rates for adults seeking reassignment surgery of 1 in 30,000 for males and 1 in 100,000 for females. Using these statistics, we would expect 3 males and 1 female in our expected scenario, and we have applied a range of +/- 50% to get a range of 2-5 adults in total.

Cost of Treatment – Information was provided at a very high level from a national medical vendor. Their pricing analysis was based entirely on external studies and sources:

- For male to female surgery they assumed roughly \$28K, with \$3,600 in hormonal therapy
- For female to male surgery they assumed about \$56K, with \$7,200 in hormonal therapy

They also noted that there would be fairly substantial counseling costs associated with the surgery—roughly \$10K in a given year.

Lisa Ellinger
Page 3

Financial Impact

Using the above, we have estimated the annual cost to range from \$100,000 to \$250,000. The costs are highly variable based on the assumptions described above. Below is brief summary;

		Prevalence		Estimated Cost (per Treatment)	Cost Estimate	
		Low	High		Low	High
Surgical Benefits	Male	1.26	3.79	\$ 41,600	\$ 52,569	\$ 157,706
	Female	0.42	1.13	\$ 73,200	\$ 30,460	\$ 82,738
	Total	1.68	4.92		\$ 83,028	\$ 240,443
Non-Surgical Benefits	Male	0.61	0.02	\$ 17,200	\$ 10,525	\$ 370
	Female	0.14	-	\$ 13,600	\$ 1,903	\$ -
	Total	0.75	0.02		\$ 12,428	\$ 370
Total Using Benefits	Male	1.88	3.81	\$ 58,800	\$ 63,094	\$ 158,076
	Female	0.56	1.13	\$ 86,800	\$ 32,363	\$ 82,738
	Total	2.43	4.94		\$ 95,456	\$ 240,814
Adult Members (18-64)					159,043	
Total PMPM					\$ 0.05	\$ 0.13

There are a few other sources we found and reviewed that provide similar information and would bring us to a similar range of cost estimates. Based on approximately \$1.3 billion of non-Medicare premiums, the cost for the State of Wisconsin Group Health Insurance Plan is estimated to be 0.007% to 0.018% of premium.

The cost to cover services related to transgender dysphoria was not anticipated during rate development and negotiations for 2017; therefore, the 2017 premiums were not changed to reflect potential transgender claims. Also note that many vendors' increases were capped at 5%, leaving no margin to add additional benefits within their current contractual rates. Reinstating the exclusion for coverage of transgender services should have no impact on program costs for 2017.

Asma Kadri

From: Ellinger, Lisa
Sent: Thursday, May 14, 2015 5:18 PM
To: Lamkins; Mark
Subject: FW: GIB Routing Item 3C - Guidelines
Attachments: Item 3C GIB 5.19.15 Guidelines (REV 0).docx

Importance: High

Mark: An advance copy of the GIB memo is attached. LE

From: Etes, Sherry A
Sent: Thursday, May 14, 2015 4:35 PM
To: Ellinger, Lisa
Subject: GIB Routing Item 3C - Guidelines
Importance: High

Good Afternoon,

There is a Board item ready for your review (click on link):

[H:\GIB Routing\5.19.15\Item 3C GIB 5.19.15 Guidelines \(REV 0\).docx](H:\GIB Routing\5.19.15\Item 3C GIB 5.19.15 Guidelines (REV 0).docx)

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Sherry Etes | Executive Staff Assistant
Office of the Secretary
Department of Employee Trust Funds
Phone: (608) 261-8920
<http://etf.wi.gov>

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ETF 02423



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CORRESPONDENCE MEMORANDUM

DATE: May 14, 2015
TO: Group Insurance Board
FROM: Tara Pray, Manager, Alternate Health Plans
SUBJECT: Guidelines & Uniform Benefits for the 2016 plan year

This memo presents a variety of options for health insurance plan design changes for the 2016 plan year, as well as several technical or administrative changes to the Guidelines contract.

The Department of Employee Trust Funds (ETF) staff requests the following of the Group Insurance Board (Board).

- 1. Approve one of the benefit options presented in this memo. Staff recommends Option 2.**
- 2. Approve the technical changes to the Guidelines contract that are detailed in this memo and grant ETF staff the authority to make additional technical changes as necessary.**

Background

Segal Consulting (Segal) presented initial recommendations for 2016 benefit changes at the March 25, 2015 Board meeting. The recommendations aim to achieve cost savings that meet the requirements of the Governor's 2015-2017 Biennial Budget (detailed below). Segal and ETF recommendations also take into consideration the impending Affordable Care Act (ACA) "Cadillac Tax" that will go into effect in 2018, as the program is in danger of meeting the thresholds that would trigger the tax at current benefit levels.

In addition to biennial budget provisions and Segal's recommendations, ETF staff collected benefit change suggestions from its usual sources over the past year: health plans, members, employers, and ETF Ombudsperson Services staff. These suggestions have been discussed with Segal and those that are supported by both Segal and ETF staff are recommended in the options included in this memo.

Every year, ETF convenes a "Study Group" to discuss potential benefit changes in order to provide the Board with feedback from the member, employer and health plan perspectives. The Study Group convened on April 28 to review the 2016

Reviewed and approved by Lisa Ellinger, Director, Office of Strategic Health Policy
Electronically Signed:

Board	Mtg Date	Item #
GIB	5.19.15	3C

Attachment to ETF 02423

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recommendations. ETF staff answered Study Group participant questions and collected feedback which is summarized in this memo.

The Study Group was comprised of ETF staff, eight representatives from other state agencies, and two representatives from Wisconsin health plan professional associations. Participants included: Jennifer Kraus and Mickie Waterman, Department of Administration (DOA); Jason Levine, Office of the Commissioner of Insurance (OCI); Danielle Carne and Paul Ostrowski, Office of State Employment Relations (OSER); Nicole Zimm, STAR Project (DOA); Zoua Vang and Deanna DeSlover, University of Wisconsin System and University of Wisconsin – Madison; Beth Ritchie, University of Wisconsin Hospital and Clinics; Phil Dougherty, Wisconsin Association of Health Plans (WAHP); RJ Pirlot, Alliance of Health Insurers (AHI); and the following ETF staff: Lisa Ellinger, Bill Kox, Mike Bormett, Sarah Bradley, Sherry Etes, Roni Harper, Arlene Larson, Tara Pray, John Alexander, Allen Angel, Vickie Baker, Liz Doss-Anderson, Brian Shah, Korbey White, and Tarna Hunter.

Biennial Budget Changes

The 2015-2017 State Budget currently includes a provision requiring the Board to work with Segal to identify \$25 million (General Purpose Revenue funds) in cost savings over the next two years. This amount equates to a needed savings of \$54 million in all funds over the 2015-2017 biennium.

Note: Due to the health insurance program operating on a calendar year, versus the State Budget operating on a state fiscal year (July 1 – June 30), required program cost savings will begin one quarter of the way into the biennium.

The State Budget also calls for an employee opt-out incentive, where those who opt-out of the state employee health insurance plan will receive an annual \$2,000 stipend. Based on previous analysis, the State Budget accounted for \$27 million in savings over the biennium for this provision. However, Segal's recent analysis of the opt-out provision concluded that there will be a negligible financial impact overall on the program.

Therefore, the total program savings required by the 2015-2017 State Budget is \$81 million in all funds over the 18 months from January 1, 2016 – June 30, 2017. To achieve the targeted savings over the 18-month timeframe would require the implementation of cost containment strategies equal to \$54 million in savings for 2016.

Segal Recommendations

The following recommendations are essentially the same as those presented by Segal at the March Board meeting, with minor adjustments. It should be noted that Segal is not recommending an increase in the employee percentage share of premium contributions. Employee premiums are established by OSER.

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Note: The recommended changes to the medical deductibles, copayments and coinsurance would not apply to the Medicare population or the Wisconsin Public Employers (WPE) program options, except as stated.

A. Medical Benefits - Projected 2016 savings: \$50 million (\$75M over biennium)

1. Coinsurance Uniform Benefits Plan

a. Modify deductible and out-of-pocket limits.

	Single		Family	
	Current	Proposed	Current	Proposed
Deductible	\$0	\$250	\$0	\$500
Out-of-Pocket Limit (OOPL)	\$500	\$1,000	\$1,000	\$2,000

Savings: This change will generate an average program savings of \$34M in 2016 (\$20M deductible and \$14M OOPL, respectively), and \$52M over the biennium.

b. Replace coinsurance with copays for office visits. The deductible would not need to be met for the copay amounts to apply for office visits.

	Current	Proposed
Primary Care Physician (PCP) Office Visit*	10%	\$15
Specialist Office Visits	10%	\$25

**copay will also apply to visits for chiropractic and therapy services*

Savings: This change will generate an average program savings of \$16M in 2016, and \$24M over the biennium.

2. Standard Plan

	Single		Family	
	Current	Proposed	Current	Proposed
Deductible (Preferred Provider)	\$200	\$250	\$400	\$500
Out-of-Pocket Limit	\$800	\$1000	\$1,600	\$2,000

Savings: This change will generate an average program savings of \$300,000 in 2016, and \$450,000 over the biennium.

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3. High Deductible Health Plan (HDHP) and Health Savings Account (HSA)

	Single		Family	
	Current	Proposed	Current	Proposed
HSA Employer Contribution*	\$170	\$750	\$340	\$1,500

*HSA Employer Contributions amounts are established by OSER

Cost: This change will generate an average program cost of \$300,000 in 2016, and \$450,000 over the biennium.

B. Pharmacy Benefits – Projected 2016 savings: \$8 million (\$12M over biennium)

Convert to a coinsurance structure for cost sharing for prescription drug levels 2-4 and increase the out-of-pocket limits.

Level	Current	Proposed
Member Costs		
Level 1	\$5	\$5
Level 2	\$15	20% (\$50 max)
Level 3	\$35 ¹	40% (\$150 max) ¹
Level 4		
• Preferred	\$15 ²	\$50 ²
• Non-preferred	\$50	40% (\$200 max)
Member Out-of-Pocket Limits (OOPL)		
Levels 1 & 2 ¹	\$410 S ³ / \$820 F ³	\$600 S / \$1,200 F
Level 4	\$1,000 S / \$2,000 F	\$1,200 S / \$2,400 F

¹Level 3 copays do not apply toward out-of-pocket limits

²Reduced copay applies when Preferred Specialty Medications are obtained from a Preferred Specialty Pharmacy

³Single (S), Family (F)

Savings: This change will generate an average program savings of \$8M in 2016 (\$7M coinsurance and \$1M OOPL, respectively), and \$12M over the biennium.

Benefit Recommendations Generated From Other Sources

These recommendations were generated from the suggestions ETF collected from sources other than Segal (e.g., members, employers, health plans, etc.). Segal has reviewed the recommendations with ETF staff and the associated costs and savings are listed below each.

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C. Members with serious disease and a likely survival of less than 6 months will be offered Advanced Care Planning (ACP) and/or a palliative care consultation. When appropriate, such individuals will receive multidisciplinary palliative care in their homes.

Rationale: ETF supports expansion of ACP to ensure that members facing serious illness are informed of care options and are able to make treatment decisions based on their individual values and goals of care.

Savings: This change will generate an average program savings of \$195,000 in 2016, and \$292,500 over the biennium.

D. Add coverage for therapies associated with habilitative services

Rationale: Therapy services related to habilitative care (meaning to “gain or maintain a new function”) are not currently covered. The program only covers therapy services for rehabilitative care (meaning to “regain or maintain a lost function”). The coverage for habilitative services is being considered this year to align the program with the coverage offered by many other plans in the rest of the state. This is currently the only ACA required federal Essential Health Benefit that the program does not cover, although large employers are not required to cover Essential Health benefits. If this benefit is added, the coverage will be offered in parity with the rehabilitation benefit; must be medically necessary, and visit limits and specialty copayments will apply.

Note: If the Board does not approve this benefit, we will consider adding clarification that therapies for developmental delay (not just disabilities) are also excluded. This clarification was suggested by a health plan this year. The current language states the therapies are excluded for “developmental disabilities”, but not specifically “developmental delays.” This would be a clarification, not a benefit change.

Cost: This change will generate an average program cost of \$1.75M in 2016, and \$2.625M over the biennium.

E. Bariatric surgery with strict treatment protocols.

Rationale: Certain surgical procedures are proven in adults for the treatment of clinically severe obesity. Technology in this area has improved and the majority of the procedures are performed laparoscopically. Successful outcomes include reduction of excess weight, improvement of quality of life and longevity, and a decreased risk of weight-related conditions, including cardiovascular disease and cancer.

Cost: This change will generate an average program cost of \$1.5M in 2016, and \$2.25M over the biennium.

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Study Group, Health Plan, and Public Feedback

The following were key areas of concern:

- **Specialty office visit copay:** Some Study Group members felt that the proposed specialty office visit copayment was high, especially for those who see multiple specialists. ETF staff relayed that the average current coinsurance cost was close to the proposed \$25 copayment amount.
- **Prescription drug cost share:** There was some concern that increasing the member share of Level 2 – 4 prescription drug costs did not equitably impact the program's population, and that an across-the-board increase to all levels would be more appropriate. ETF staff responded that there was a desire to keep drugs affordable whenever possible, particularly with Level 1 generics that impact the vast majority of members in the health insurance program.
- **Cost shifting:** There was a general concern about cost shifting to members and for employers to be able to recruit and retain quality staff since state employee salary increases are not at pace with competing employers.
- **Education/communications needed:** The Study Group agreed that if the recommendations are adopted, a significant educational effort will be needed for both employers and members.
- Study Group participants emphasized the importance of the Board understanding the member impacts of the recommendations, such as the number of members impacted by each proposed change.
- **Offering of ACP and/or palliative care with less than 6 months life expectancy:** Study group members noted that addressing ACP in the medical services rather than specifically in home care or hospice could also have the indirect benefit of increasing the reach to those without a terminal diagnosis or those with greater than 6 months life expectancy. ETF staff clarified that this is an incremental change.

Some health plans have indicated that they can identify members with serious illnesses, but are unable to identify those with a less than 6 month life expectancy.

- **Coverage for habilitative services:** The Study Group concurred this would be a positive change for the program and that the families who have been denied services feel that the current exclusion is discriminatory. Health plans suggested establishing clear medical necessity criteria at the health plan's discretion as well as a set limit on the benefit.
- **Bariatric surgery:** Health plans commented that such coverage is not a common market benefit and adding coverage does not seem to align with

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reducing costs and increasing the focus on wellness. They also acknowledged that technology has greatly improved in this area. If this becomes a covered benefit health plans want ETF to define the specific types of bariatric surgery covered and coverage protocols so that plans can administer consistently.

Note: The Study Group feedback has been shared with Segal.

Since Segal’s recommendations have become public, ETF has experienced an increase in calls and emails from members and employers expressing concerns over the proposed changes. The overarching concern is health care costs being shifted to members. There is concern about affordability, as most members are experiencing a net decrease in take-home pay due to minimal salary adjustments and increases in employee contributions for benefits.

Benefit and Contract Change Options – to be voted on by the Board

The following options are for the Board’s consideration. Staff recommends Option 2. The total cost savings for 2016 associated with Option 2 are in line with the savings required as a part of the biennial budget, and they also add benefits that will round out the program, covering all of the federal essential health benefits as well as progressing and end of life initiatives as part of the strategic plan. Staff recognizes that the projected savings correlated with Option 2 are slightly above the required budget target, however this figure helps to address the impending ACA “Cadillac Tax.”

Note: The Coinsurance Wisconsin Public Employers (WPE) Group Health Insurance Program mirrors the State Coinsurance Uniform Benefits plan design and will incorporate changes approved by the Board. Other WPE options will maintain different deductibles and coinsurance.

Option 1: \$54,945,000 Projected 2016 Savings (\$82,417,500 Savings Over Biennium)				
A. Segal <u>medical</u> benefit changes	B. Segal <u>pharmacy</u> benefit changes	C. ACP & palliative care	D. Habilitative services	E. Bariatric surgery
\$50M savings	\$8M savings	\$195,000 savings	\$1.75M cost	\$1.5 cost
+ Deductible \$20M	Coinsurance Rx Levels 2-4 \$7M ↑ Max Out-of-Pocket \$1M	Average 2016 savings \$195,000	Average 2016 cost \$1.75M	Average 2016 cost \$1.5M
↑ Max Out-of-Pocket \$14M				
Office Visit Copays \$10M				
Therapy Copays \$6M				
Standard Plan \$.3M				
↑ HSA Deposit (\$.3M)				

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Option 2: \$56,445,000 Projected 2016 Savings (\$84,667,500 Savings Over Biennium)							
A. Segal <u>medical</u> benefit changes \$50M savings		B. Segal <u>pharmacy</u> benefit changes \$8M savings		C. ACP & palliative care \$195,000 savings		D. Habilitative services \$1.75M cost	
+ Deductible	\$20M	Coinsurance Rx Levels 2-4	\$7M	Average 2016 savings \$195,000	Average 2016 cost \$1.75M		
↑ Max Out-of-Pocket	\$14M						
Office Visit Copays	\$10M	↑ Max Out-of-Pocket	\$1M				
Therapy Copays	\$6M						
Standard Plan	\$.3M						
↑ HSA Deposit	(\$.3M)						

Option 3: \$58,195,000 Projected 2016 Savings (\$87,292,500 Savings Over Biennium)						
A. Segal <u>medical</u> benefit changes \$50M savings		B. Segal <u>pharmacy</u> benefit changes \$8M savings		C. ACP & palliative care \$195,000 savings		
+ Deductible	\$20M	Coinsurance Rx Levels 2-4	\$7M	Average 2016 savings \$195,000		
↑ Max Out-of-Pocket	\$14M					
Office Visit Copays	\$10M	↑ Max Out-of-Pocket	\$1M			
Therapy Copays	\$6M					
Standard Plan	\$.3M					
↑ HSA Deposit	(\$.3M)					

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Option 4: \$58M Projected 2016 Savings (\$87,000,000 Savings Over Biennium)			
A. Segal <u>medical</u> benefit changes \$50M savings		B. Segal <u>pharmacy</u> benefit changes \$8M savings	
+ Deductible	\$20M	Coinsurance Rx Levels 2-4	\$7M
↑ Max Out-of-Pocket	\$14M	↑ Max Out-of-Pocket	\$1M
Office Visit Copays	\$10M		
Therapy Copays	\$6M		
Standard Plan	\$.3M		
↑ HSA Deposit	(\$.3M)		

Option 5: 2016 Savings to be Determined
Other options as selected by the Board

Recommended Technical/Administrative Changes

This section explains minor contract and Guidelines updates. These recommendations were also generated from the suggestions ETF collected from sources other than Segal (e.g., members, employers, health plans, etc.). Staff will be at the meeting if the Board has questions about any of the following changes.

1. Health plans may offer a conversion policy or a Marketplace plan in the event of exhaustion of COBRA coverage. Current Guidelines require a conversion policy only. The Office of the Commissioner of Insurance (OCI) interprets Marketplace plans to meet state law (§632.897).
2. Add a due date for Summary of Benefits & Coverage (SBC) documents required by the ACA to the timeline in the Guidelines.
3. Clarify that the Standard Plan and the HDHP Standard Plan are two separate plans.
4. Require employers to pay the ETF invoice amount and adjust for discrepancies prospectively.
5. Allow WPE to offer opt-out incentives, as provided for state employees in the biennial budget proposal.
6. Clarify that we allow retroactive terminations of coverage in cases where a dependent was enrolled in Medicaid but the employer was not notified timely.
7. Clarify that we allow participants to enroll within 30 days of *notice* of loss of eligibility for coverage.

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8. Clarify that new hires must file an application for the HDHP at the same time as creating an HSA account. This is implied, but not specifically stated.
9. Align WPE language with that in the state contract for consistency as appropriate.
10. Add "employer paid local annuitants" to the 2016 contract clarification requiring all Medicare eligible annuitants to enroll when first eligible. This is a clarification of current policy.
11. Clarify that an implanted special lens, such as a multi-focal lens, is not medically necessary for cataract surgery.
12. Clarify that the autism benefit limits are adjusted annually by OCI based on inflation. This is confusing now because the stated limits are \$50,000/\$25,000 and the related statute regarding inflationary increases is also referenced.
13. Update the surgical exclusion language from "sex transformation" to "gender reassignment".
14. Allow subscribers who move from a county to change to any health plan, not limited to the health plans offered in the new county.
15. Make technical enrollment changes as needed for STAR including regarding the timing of premium payments to health plans.
16. Limit coverage of minor dependents to only be covered once within the program.
17. Change language in the Wellness Guidelines from "The BOARD will reward HEALTH PLANS that administer HRAs and biometric screenings to more than 50% of the PARTICIPANTS...", to "The BOARD may reward HEALTH PLANS that administer HRAs and biometric screenings to more than 50% of the PARTICIPANTS..."
18. Add expired prescription drugs to the exclusions for covering/replacing prescription drugs.
19. Plans/providers will administer a patient satisfaction survey to all ETF members participating in a SDM program.

Suggestions Deferred to Future Plan Years

The following proposed changes are not recommended for 2016 based upon discussions between ETF and Segal staff. Consideration of these changes will be deferred as possibly part of a broader program redesign for 2017 or beyond.

1. Create a member incentive to participate in SDM.
2. Modify hospice care language to expand to include those who have less than 1 year life expectancy, rather than 6 months.
3. Increase the emergency room copay to a market standard of \$150-\$200.
4. Implement an urgent care visit copay.
5. Align all coinsurances at either 10% or 20% (member responsibility).
6. Add coverage for 3D mammography.
7. Add coverage for tooth root removal (D7250) under oral surgery benefits.
8. Add specific contract language on coverage for telemedicine.
9. Add coverage for gender reassignment benefits with strict protocols.

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10. Modify current exclusion language on genetic testing to exclude genetic testing that is not proven to affect medical management.
11. Administer the Well Wisconsin program through a Third Party Administrator.
12. Add a "Tier 0" where health plans could offer a narrow "value based" network built on an Accountable Care Organization or a Patient-Centered Medical Home.
13. ETF creates SBC documents instead of the health plans.
14. Codify in contract that members have up to one year to add a child due to birth per Wis. §632.895.
15. Exemption from participation in Wisconsin Health Information Organization (WHIO).
16. Create a lower prescription drug copay to incent members into disease management.
17. Modify the Miscellaneous Hospital Expense definition to specifically exclude convenience items. This would be duplicative of existing exclusion.
18. Include shingles vaccine coverage for individuals as early as age 50. Not recommended for this group per the Centers for Disease Control.
19. Add 50% coverage for out of area care that is medically necessary, non-emergent, non-urgent follow up care. It would require prior authorization and be subject to the usual, customary and reasonable health plan charges.
20. Shift SDM requirements to the providers instead of the health plans.
21. Shift End of Life Care and ACP requirements to providers instead of the health plans.
22. Add a spousal surcharge.
23. Limit hearing aids to every three years, counted even if member changes health plans.
24. Remove the \$1,000 maximum health plan hearing aid payment for members ages 18 and older (covering 90% with the limit of one aid per ear no more than once every 3 years).
25. Limit the number of cardiac rehabilitation visits covered per calendar year.
26. Remove the authorization requirement for standard corneal transplants (prior authorization will still be necessary for artificial corneal transplant or keratoprosthesis).
27. Limit chiropractic visits to 15 per year and allow additional visits only when prior authorized by the health plan, up to a maximum of additional 15 visits.
28. Allow transgender people to change their gender in the ETF system with or without surgery.
29. Allow members to select a gender other than male or female on their health insurance application.
30. Add an exclusion for the additional cost of robotic surgery.
31. Add an exclusion for the removal of skin tags.
32. Add an exclusion for the routine foot care.
33. Add an exclusion for hair removal.
34. Add "unproven" to the experimental exclusion (alternative – add "unproven" to the definition of "Experimental").
35. Remove the "hold harmless" provision.

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36. WPE Deductible Program Option (PO) 4 for Medicare eligible & enrolled.
Deductible is applied. Most Medicare retiree plans would have \$0 deductible apply.
37. Add contract language regarding Suboxone and related detoxification maintenance exclusion.
38. Add coverage for transitional residential services for patient needs beyond Alcohol and Other Drug Abuse (AODA) treatment (e.g. treatment of an eating disorder).
39. Clarify that exclusion for out of area prior authorized maternity services also applies to births that take place after the due date.

Staff will be at the Board meeting to answer any questions.