

AGENDA ITEM DETAILS

Subject: Review, Discussion and Consideration of update to the Tobacco Certification Policy - (ACTION)

RECOMMENDED ACTION:

Move that the Board of Trustees of the Employees Retirement System of Texas approve the proposed change to the definition of "Tobacco Product" within the Tobacco Certification Policy and related forms, educational materials, and instructions.

Background

During the 82nd Legislative session, the Texas Legislature passed Senate Bill 1664 adding Section 1551.3075 to the Insurance Code. The statute required ERS to establish (no later than January 1, 2012) and enforce a monthly Tobacco User Premium Differential for Group Benefits Program (GBP) participants who use tobacco products. The program became effective September 1, 2011.

The state's General Appropriations Act sets a \$30 per month per participant premium differential for tobacco use. Each person covered in the GBP must certify if they are a tobacco user. A tobacco user is an individual who has consumed tobacco products at least five times in the past three months. Each person who meets the criteria as a tobacco user must pay \$30 monthly, up to \$90 per month if three or more members of the same family certify that they use tobacco. If a member and their spouse or a member and their child use tobacco, ERS assesses a \$60 premium differential. The program is intended to encourage GBP participants to choose a tobacco-free lifestyle, financially rewarding participants who do not use tobacco products.

As of August 31, 2019, more than 33,000 health plan participants certified as tobacco-users. During FY19, the GBP collected \$12.1 million in premium differential payments.

The ERS Tobacco Certification Policy, which included the definition of "Tobacco Product", was developed in 2011 in order to implement the legislative requirement. The definition currently excludes some e-cigarettes (a term that now includes vaping products). At the time, as newly released products, some groups considered e-cigarettes to be possible tools to aid in smoking cessation. However, as the industry and related products have evolved, e-cigarettes and vaping products have not received official designation as smoking cessation tools, and research has raised some questions as to whether the products provide healthier alternatives to traditional tobacco products.

State legislative activity has also defined vaping products, regardless of whether or not they contain tobacco, to be in the same category as traditional tobacco products. ERS staff proposes to update the agency's Tobacco Certification Policy definition of "Tobacco Product" to include all e-cigarettes and vaping products. This change will clarify the scope of the definition, without limiting health plan participants and their medical providers from using such products for smoking cessation. Through the "Choose to Quit" tobacco cessation program, an individual's treating physician would remain able to approve a cessation treatment program that includes the use of e-cigarettes without incurring the monthly

premium differential. The program would need to be re-approved by a doctor annually to continue to avoid the charge.

If approved, the change in this policy will take effect with the fiscal/plan year beginning September 1, 2020. ERS staff will begin communicating the definition change to health plan members as soon as possible following approval, and will incorporate the new definition in 2020 Summer Enrollment period materials and systems. The implementation timeline also provides members time to end use of the added products prior to the certification taking effect.

During an October 2019 meeting, the Group Benefits Advisory Committee (GBAC) discussed the issues surrounding the recommendation for the proposed policy change and expressed support to take the issue to the Board of Trustees. The GBAC Chair reported the committee's support for the change directly to the Board during the December 10, 2019 quarterly meeting.

STAFF RECOMMENDATION:

Staff recommends updating the definition of "Tobacco Product" used within the ERS Tobacco Certification Policy, related forms, educational materials, and instructions, to include all e-cigarette and vaping products. The proposed definition reads as follows:

"Tobacco Product" is defined as all types of tobacco, including but not limited to: cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, dip, and all e-cigarettes / vaping products.