

WSR 24-14-130

PROPOSED RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2024-01.04—Filed July 2, 2024, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-060.

Title of Rule and Other Identifying Information: The following sections are being amended: WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? and 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance?

Hearing Location(s): On August 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ICtK0VXGQXC1k3UtUFFypw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 3, 2024, 8:00 a.m., by August 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by July 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules to support the PEBB program:

1. Amended WAC 182-12-171 and 182-12-211 to implement statutory changes:

- In response to HB 1008, section 1, chapter 164, Laws of 2023, HCA amended WAC 182-12-171 and 182-12-211 to include separated employees and clarified the requirement for a retiring employee who is a member of Plan 3 retirement system.
- In response to SHB 1804, section 1, chapter 312, Laws of 2023, HCA amended WAC 182-12-171 to update WAC references.
- In response to SB [SSB] 5275, section 5, chapter 13, Laws of 2023, HCA amended WAC 182-12-171 and 182-12-211 to add eligibility requirements for retiring school employees of a SEBB participating employer group.

2. Amended WAC 182-12-171 and 182-12-211 to implement the following PEBB policy resolutions:

- PEBB 2024-14 Non-medicare retiree enrollment requirement.
- PEBB 2024-19 UMP classic medicare enrollment.
- PEBB 2024-20 UMP classic medicare plan enrollment during gap month(s).
- PEBB 2024-21 Amending 2022-03 medicare advantage prescription drug plan.

3. Make other technical amendments:

- Amended WAC 182-12-171 to include an exception when the first premium payment and applicable premium surcharges are due to HCA and clarified PEBB participating employer group and UMP classic medicare plan enrollment procedures.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; HB 1008, section 1, chapter 164, Laws of 2023; SHB 1804, section 1, chapter 312, Laws of 2023; SSB 5275, section 5, chapter 13, Laws of 2023; and PEBB Resolutions.

Statute Being Implemented: RCW 41.05.021, 41.05.160; HB 1008, section 1, chapter 164, Laws of 2023; SHB 1804, section 1, chapter 312, Laws of 2023; SSB 5275, section 5, chapter 13, Laws of 2023.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Cade Walker, P.O. Box 42716, Olympia, WA 98504-2716, 360-643-7900; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

July 2, 2024

Wendy Barcus

Rules Coordinator

OTS-5525.1

AMENDATORY SECTION (Amending WSR 23-14-015, filed 6/23/23, effective 1/1/24)

WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee or a retiring school employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet procedural and substantive eligibility requirements as described in subsections (1), (2), and (3) of this section. An elected and full-time appointed official of the legislative and executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee or a retiring school employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through ~~((d))~~ (e) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than 60 days after the employee's or the school employee's own employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's or the school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends;

Note: Enrollment in the PEBB program's medicare advantage (MA) ~~((or))~~ plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.

(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when MA coverage begins.

(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ~~((Uniform Medical Plan (UMP) Classic))~~ transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.

(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.

(b) The employee's or the school employee's first premium payment for PEBB retiree insurance coverage and applicable premium surcharges are due to the health care authority (HCA) no later than 45 days after the election period ends as described in (a) of this subsection, except as described in WAC 182-08-180 (1)(a). Following the employee's or the school employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c); and

(c) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee;

Exceptions: (1) If a retiring employee or a retiring school employee selects a medicare supplement plan ~~((or))~~ a MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a retiring employee or a retiring school employee selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(d) A nonmedicare retiring employee or retiring school employee must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.

(e) To defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

(2) Substantive eligibility requirements.

An employee who is eligible for PEBB benefits through an employing agency, or a school employee who is eligible for SEBB benefits through a SEBB organization, a SEBB participating employer group, or basic benefits through an educational service district as defined in RCW 28A.400.270 who ends public employment may enroll or defer enrollment in PEBB retiree insurance coverage if they meet procedural and substantive eligibility requirements.

To be eligible to continue enrollment or defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must be vested in and eligible to retire under a Washington state-sponsored retirement plan when the employee's or school employee's own employer-

paid coverage, COBRA coverage, or continuation coverage ends. An exception to the requirement to be vested in and eligible to retire under a Washington state-sponsored retirement plan is provided for employees of ~~((a))~~ a PEBB participating employer group in (c)(i) of this subsection and for school employees of a SEBB participating employer group in (e)(i) of this subsection. To satisfy the requirement to immediately begin to receive a monthly retirement plan payment as described in (a), (b), (c)(ii), ~~((and))~~ (d), and (e)(ii) of this subsection, the employee or school employee must begin receiving a monthly retirement plan payment no later than the first month following the employee's or school employee's own employer-paid coverage, COBRA coverage, or continuation coverage ending.

(a) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee as defined in RCW 41.05.011 (25)(b), who separates from employment on or after January 1, 2024, and who is at least age 55 with at least 20 years of service; or

(iii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee ~~((+))~~ as defined in RCW 41.05.011 (25)(a) ~~((+))~~, must meet their Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage), who is at least age 55 with at least 10 years of service.

(b) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age 55 with 10 years of state service;

(c) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (c)(i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage.

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of public employees retirement system Plan 1, if their date of hire with that employer group or tribal government was before October 1, 1977, or Plan 2, if their date of hire with that employer group or tribal government was on or after October 1, 1977.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in (a)(i) ~~((and))~~, (ii), or (iii) of this subsection.

(iii) A retired employee of an employer group that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if they enrolled after September 15, 1991. Any retiree who loses eligibility for this reason

may continue health plan enrollment as described in WAC (~~(182-12-146)~~) 182-12-232.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC (~~(182-12-146)~~) 182-12-232.

(d) A retiring school employee of a SEBB organization must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring school employee who ends employment before October 1, 1993; or

(ii) A retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the school employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the school employee enrolled before 1995; or

(iii) A retiring school employee who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee as defined in RCW 41.05.011 (25) (b), who separates from employment on or after January 1, 2024, and who is at least age 55 with at least 20 years of service; or

(iv) A retiring school employee who is a member of a Plan 3 retirement system, also called a separated employee (~~(+)~~) as defined in RCW 41.05.011 (25) (a) (~~(+)~~, must meet their Plan 3 retirement eligibility criteria), who is at least age 55 with at least 10 years of service; or

(~~(iv)~~) (v) A school employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if they enrolled in a PEBB health plan no later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(e) A retiring school employee of an employer group participating in SEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (e) (i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage.

(i) A retiring school employee who is eligible to retire under a retirement plan sponsored by an employer group that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of teachers retirement system Plan 1, if their date of hire with that employer group was before October 1, 1977, or Plan 2, if their date of hire with that employer group was on or after October 1, 1977.

(ii) A retiring school employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in (d) (ii), (iii), or (iv) of this subsection.

(iii) A retired school employee of an employer group that ends participation in SEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-232.

(3) A retiring employee or a retiring school employee and their enrolled dependents who are eligible for medicare must enroll and maintain enrollment in both medicare Parts A and B if the employee or the school employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(4) Washington state-sponsored retirement plans include:

- (a) Higher education retirement plans;
- (b) Law enforcement officers' and firefighters' retirement system;
- (c) Public employees' retirement system;
- (d) Public safety employees' retirement system;
- (e) School employees' retirement system;
- (f) State judges/judicial retirement system;
- (g) Teachers' retirement system; and
- (h) State patrol retirement system.

(i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB benefits at the time of retirement.

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage?

(1) An employee or a school employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll or defer enrollment (as described in WAC 182-12-200 or 182-12-205) in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee or the school employee submits the required form and a copy of the formal determination letter they received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's or the school employee's form and a copy of their Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than 60 days after the date on the determination letter; and

(c) The employee or the school employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan benefit under their higher education retirement plan (HERP), with exceptions described below from WAC 182-12-171(2):

(i) ~~A retiring employee of a state agency, ((an)) a retiring school employee of a school employees benefits board (SEBB) organization, or a retiring employee or a retiring school employee of an employer group participating under a Washington state sponsored retirement plan ((, or a retiring school employee)) who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or~~

~~(ii) A retiring employee of a state agency, a retiring school employee of a SEBB organization, or a retiring employee or retiring school employee of an employer group participating under a Washington state sponsored retirement plan who is a member of the teachers' retirement system Plan 2, school employees' retirement system Plan 2, or public employees' retirement system Plan 2, also called a separated employee as defined in RCW 41.05.011 (25)(b), who separates from employment on or after January 1, 2024, and who is at least age 55 with at least 20 years of service; or~~

~~(iii) A retiring employee of a state agency, ((an)) a retiring school employee of a SEBB organization, or a retiring employee or a retiring school employee of an employer group participating under a Washington state sponsored retirement plan ((, or a retiring school employee)) who is a member of a Plan 3 retirement plan, also called a separated employee ((+)as defined in RCW 41.05.011 (25)(a) ((, must meet their Plan 3 retirement eligibility criteria. The employee or the school employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage)), who is at least age 55 with at least 10 years of service; or~~

~~((iii)) (iv) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age 55 with 10 years of state service.~~

(2) The employee or the school employee, at their option, must indicate the date of enrollment or deferment in PEBB retiree insurance coverage on the form. The employee or the school employee may choose from the following dates:

(a) The retirement date as stated in the formal determination letter; or

(b) The first day of the month following the date the formal determination letter was written.

Note: Enrollment in the PEBB program's medicare advantage (MA) ~~((or)) plan, medicare advantage-prescription drug (MA-PD) plan, or the Uniform Medical Plan (UMP) Classic medicare plan may not be retroactive.~~

~~(1) If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins.~~

~~(2) If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in ((Uniform Medical Plan (UMP) Classic)) transitional coverage as designated by the director or designee during the gap month(s) prior to when the MA-PD coverage begins.~~

~~(3) If a subscriber elects to enroll in the UMP Classic medicare plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in transitional UMP coverage during the gap month(s) prior to when the UMP Classic medicare plan begins.~~

(3) The director may make an exception to the date of PEBB retiree insurance coverage described in subsection (2)(a) and (b) of this section; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

(4) Premiums and applicable premium surcharges are due from the effective date of enrollment in PEBB retiree insurance coverage.

(5) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must

be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee.

Exceptions:

(1) If a retiring employee or a retiring school employee selects a medicare supplement plan ((or)), MA-PD plan, or the UMP Classic medicare plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.
(2) If a retiring employee or a retiring school employee selects a medicare supplement plan, MA-PD plan, or any other medicare plan, they may elect a PEBB vision plan available for any nonmedicare enrollees.

(6) A nonmedicare retiring employee or retiring school employee must enroll in PEBB medical to be able to enroll in PEBB dental, in PEBB vision, or in both PEBB dental and PEBB vision. Any nonmedicare dependents they elect to enroll must be enrolled in the same PEBB medical, PEBB dental, and PEBB vision plan.