

WSR 21-10-062

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2021-01.02—Filed April 30, 2021, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-109.

Title of Rule and Other Identifying Information: WAC 182-30-070

The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees, 182-31-070 Is dual enrollment in school employees benefits board (SEBB) prohibited?, 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment?, and 182-31-160 National Medical Support Notice (NMSN).

Hearing Location(s): On June 8, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/8620587191761803532>, Webinar ID 384-227-715. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than June 9, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 8, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by May 21, 2021.

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 SEBB program.

1. Implement SEBB policy resolutions related to dual enrollment prohibitions between SEBB and public employees benefits board (PEBB) programs and long-term disability insurance enrollment procedures:

Amended WAC 182-30-070, 182-31-070, 182-31-080, and 182-31-160 to implement the following dual enrollment related SEBB policy resolutions:

- SEBB 2021-02 Amending Resolution SEBB 2018-53 School employees may waive enrollment in medical.
- SEBB 2021-03 SEBB benefit enrollment requirements when PEBB benefits are waived.
- SEBB 2021-04 Resolving dual enrollment when a school employee's only medical enrollment is in PEBB.
- SEBB 2021-05 Resolving dual enrollment involving dual subscriber eligibility.
- SEBB 2021-06 Resolving dual enrollment involving a SEBB dependent with multiple medical enrollments.
- SEBB 2021-07 Resolving dual enrollment involving a member with multiple medical enrollments as a dependent.
- SEBB 2021-08 SEBB benefit automatic enrollments when PEBB benefits are auto-disenrolled.

- SEBB 2021-09 Enrollment requirements when a school employee loses dependent coverage in PEBB benefits.

Amended WAC 182-31-080 to implement policy resolution SEBB 2021-11 Employee-paid long-term disability enrollment procedures.

2. Make other technical amendments:

- Amended WAC 182-31-080 to clarify when a school employee may waive SEBB medical during a special enrollment event and to clarify what a special open enrollment event is.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; policy resolutions SEBB 2021-02, SEBB 2021-03, SEBB 2021-04, SEBB 2021-05, SEBB 2021-06, SEBB 2021-07, SEBB 2021-08, SEBB 2021-09, SEBB 2021-11.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Scott Palafox, 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.

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.

April 30, 2021
Wendy Barcus
Rules Coordinator

OTS-3023.1

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-070 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible school employees. School employees benefits board (SEBB) organizations must pay the employer contributions to the health care authority (HCA) for SEBB insurance coverage for all eligible school employees and their enrolled dependents.

(1) Employer contributions are set by the HCA, and are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. The employer contri-

bution for school employees eligible under RCW 41.05.740 (6) (e) are set by the HCA.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer SEBB benefits for school employees.

(3) Each school employee of a SEBB organization on leave under the federal Family and Medical Leave Act (FMLA) or the paid family medical leave program is eligible for the employer contribution as described in WAC 182-31-110.

(4) The entire employer contribution is due and payable to HCA even if ((SEBB medical)) enrollment is waived as described in WAC 182-31-080, except for school employees eligible under WAC 182-30-130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-070, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-070, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-070, filed 12/14/18, effective 1/14/19.]

OTS-3027.1

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-070 Is dual enrollment in school employees benefits board (SEBB) and public employees benefits board (PEBB) prohibited?

School employees benefits board (SEBB) medical, dental, and vision coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the SEBB program or public employees benefits board (PEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in SEBB medical, SEBB dental, and SEBB vision coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible school employee may waive SEBB medical and enroll as a dependent under the SEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-31-080.

(3) A dependent enrolled in SEBB medical, SEBB dental, or SEBB vision who becomes eligible for SEBB benefits as a school employee must elect to enroll in SEBB benefits as described in WAC 182-30-080(1). This includes making an election to enroll in or waive enrollment in SEBB medical as described in WAC 182-31-080 (1)(a).

(a) If the school employee does not waive enrollment in SEBB medical, the school employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent. If the school employee's spouse, state registered domestic partner, or parent does not take action to remove the school employee (who is enrolled as a dependent) from their subscriber ac-

count, the SEBB program will (~~terminate~~) automatically disenroll the school employee's enrollment as a dependent the last day of the month before the school employee's enrollment in SEBB benefits begins as described in WAC 182-31-040.

Exception: An enrolled dependent who becomes newly eligible, at the start of the school year, for SEBB benefits as a school employee could be dual-enrolled in SEBB medical, dental, and vision for one month. This exception is only allowed for the first month the dependent is enrolled as a school employee.

(b) If the school employee elects to waive their enrollment in SEBB medical, the school employee will remain enrolled in SEBB medical under their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent.

(4) A child who is eligible for SEBB medical, SEBB dental, and SEBB vision under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in SEBB medical, a single enrollment in SEBB dental, and a single enrollment in SEBB vision.

(5) When a school employee is eligible for the employer contribution toward SEBB benefits due to employment in more than one SEBB organization the following provisions apply:

(a) When a school employee is eligible for the employer contribution during a school year under WAC 182-31-040 and 182-30-130 the SEBB organization that has determined the school employee eligible under WAC 182-31-040 must make the employer contribution;

(b) If the school employee is eligible for the employer contribution under WAC 182-31-040 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(c) If the school employee is eligible for the employer contribution under WAC 182-30-130 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(d) If the school employee loses eligibility under one SEBB organization, they must notify their other SEBB organization no later than sixty days from the date of loss of the first SEBB benefits in order to transfer coverage;

(e) The school employee's elections remain the same when a school employee transfers their enrollment under one SEBB organization to another SEBB organization without a break in SEBB benefits for one month or more, as described in (d) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the SEBB and PEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the SEBB or PEBB program. If the individual takes no action to resolve the dual enrollment, the SEBB program or the PEBB program will automatically enroll or automatically disenroll the individual as described in this subsection.

(a) An eligible school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental as described in WAC 182-31-080. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(b) An employee in the PEBB program who waives PEBB medical and PEBB dental for SEBB medical must be enrolled in SEBB dental and SEBB vision. If necessary, the SEBB program will automatically enroll the individual in the associated subscriber's SEBB dental and SEBB vision.

(c) If the school employee is enrolled only in SEBB dental and SEBB vision, and is also enrolled in PEBB medical, and no action is taken to resolve their dual enrollment, the school employee will re-

main in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB dental and SEBB vision in which they are enrolled. The school employee's enrollment in SEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(d) If the school employee is enrolled in SEBB medical and is also an employee in the PEBB program enrolled in PEBB medical, and the school employee has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken by the school employee to resolve their dual enrollment, they will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB medical, SEBB dental, and SEBB vision. The school employee's enrollment in SEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the school employee eligible under both the SEBB program as a school employee and the PEBB program as an employee is not enrolled in any medical, but is enrolled only in PEBB dental, SEBB dental, and SEBB vision, the school employee will remain in SEBB dental and SEBB vision. The PEBB program will automatically disenroll the employee from PEBB dental.

(e) If the school employee's dependent is enrolled in any SEBB medical, SEBB dental, or SEBB vision plan, and the dependent is also an employee in the PEBB program and enrolled in PEBB medical, and no action is taken by either the school employee or the dependent to resolve the dependent's dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision in which they are enrolled.

(f) If the school employee's dependent is enrolled in both SEBB medical and PEBB medical as a dependent and has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken to resolve the dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision if they are enrolled. If the school employee's dependent who is eligible as a dependent in both the SEBB and PEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(g) If the school employee's dependent, who is also an employee in the PEBB program who the PEBB program automatically disenrolled from PEBB dental, the SEBB program will automatically enroll the school employee's dependent in SEBB vision. The SEBB program will also automatically enroll the school employee's dependent in SEBB dental, if they are not already enrolled.

(h) If the school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the school employee will be required to return from waived enrollment as described in WAC 182-31-080 (3)(b).

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-070, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s.]

c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-070, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment? A school employee may waive enrollment in school employees benefits board (SEBB) medical only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. ~~((A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits.))~~ A school employee who waives enrollment in SEBB medical must enroll in SEBB dental, SEBB vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and ((basic)) employer-paid long-term disability (LTD) insurance. A school employee will also be enrolled in employee-paid LTD insurance automatically unless the school employee declines their employee-paid LTD insurance as described in WAC 182-30-080.

Exception: A school employee may waive their enrollment in SEBB medical to enroll in public employees benefits board (PEBB) medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(1) To waive enrollment in SEBB medical, the school employee must submit the required form to their SEBB organization at one of the following times:

(a) **When the school employee becomes eligible:** A school employee may waive SEBB medical when they become eligible for SEBB benefits. The school employee must indicate their election to waive enrollment in SEBB medical on the required form and submit the form to their SEBB organization. The SEBB organization must receive the form no later than thirty-one days after the date the school employee becomes eligible for SEBB benefits (see WAC 182-30-080). SEBB medical will be waived as of the date the school employee becomes eligible for SEBB benefits.

(b) **During the annual open enrollment:** A school employee may waive SEBB medical during the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** A school employee may waive SEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility or regaining eligibility for SEBB benefits.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to their SEBB organization.

SEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received.

If that day is the first of the month, SEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical will be waived the last day of the previous month.

(2) If a school employee waives SEBB medical, the school employee may not enroll dependents in SEBB medical.

(3) Once SEBB medical is waived, the school employee is only allowed to enroll in SEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows a school employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to the SEBB organization.

SEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical for the school employee will begin on the first day of the month in which the event occurs. SEBB medical for the newly born child, newly adopted child, spouse, or state-registered domestic partner will begin as described in WAC 182-31-150 (3) (a) (iv).

If a school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the health care authority will notify the school employee of their removal from the PEBB subscriber's account and that they have experienced a special enrollment event. The school employee will be required to return from waived enrollment and elect SEBB medical, SEBB dental, and SEBB vision. If the school employee's SEBB organization does not receive the school employee's required forms indicating their medical, dental, and vision elections within sixty days of the school employee losing PEBB medical and PEBB dental, they will be defaulted into employee-only SEBB medical, SEBB dental, and SEBB vision as described in WAC 182-30-080 (1) (b) (i) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the school employee to enroll in SEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the school employee, the school employee's dependent, or both.

(a) School employee acquires a new dependent due to:

- (i) Marriage or registering a state registered domestic partnership;
 - (ii) Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
 - (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.
- (b) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);
- (c) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group medical;
- (d) The school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

- (e) School employee or a school employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;
- (f) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;
- (g) A court order requires the school employee or any other individual to provide a health plan for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);
- (h) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: A school employee may only return from having waived SEBB medical for the events described in (h) of this subsection. A school employee may not waive their SEBB medical for the events described in (h) of this subsection.

- (i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;
- (j) School employee or a school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;
- (k) School employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-080, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-080, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-160 National Medical Support Notice (NMSN). (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under (c) of this subsection. School employees submit the required forms to their school employees benefits board (SEBB) organization. Subscribers on continuation coverage submit the required forms to the SEBB program;

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the SEBB organization or the SEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

(i) The child's other parent; or

(ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

(i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;

(ii) A school employee who has waived SEBB medical as described in WAC 182-31-080 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;

(iii) The subscriber's selected health plan will be changed if directed by the NMSN;

(iv) If the dependent is already enrolled under another SEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN; ((~~or~~))

(v) If the dependent is enrolled in both public employees benefits board medical and SEBB medical as a dependent as described in WAC 182-31-070 (6) (f) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or

(vi) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(d) Changes to health plan coverage or enrollment as described in (c) (i) through (iii) of this subsection will begin the first day of the month following receipt by the SEBB organization of the NMSN. If the NMSN is received by the SEBB organization on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in (c) (iv) of this subsection the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's SEBB health plan coverage prospectively.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-160, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s.]

c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-160, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-160, filed 12/14/18, effective 1/14/19.]