

WSR 21-10-063

PROPOSED RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2021-01.03—Filed April 30, 2021, 3:47 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 182-30-040 Premium payments and premium refunds, 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors?, 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms?, 182-31-040 How do school employees establish eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and when do SEBB benefits begin?, 182-31-110 What options are available if a school employee is approved for the federal Family and Medical Leave Act (FMLA) or the paid family and medical leave program?, and 182-31-120 What options for continuation coverage are available to school employees during their appeal of a grievance?

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: Health Care Authority (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 long-term disability insurance (LTD) enrollment and eligibility requirements:

Amended WAC 182-30-040, 182-30-060, 182-30-080, 182-31-040, and 182-31-120 to implement the following LTD insurance related SEBB policy resolutions:

- SEBB 2021-11 Employee-paid long-term disability (LTD) enrollment procedures.
- SEBB 2021-12 Amending Resolution SEBB 2018-54 relating to default enrollments.

2. Make other technical amendments:

- Amended WAC 182-30-040 to include premiums and applicable premium surcharges are due to the contracted vendor, to change the accounting adjustment period from three months to sixty days, and to specify SEBB insurance coverage.

- Amended WAC 182-30-060 to change medical flexible spending arrangement or dependent care assistant program enrollment from three months to sixty days prior to the date enrollment is processed and to clarify recourse rule on when school employee eligibility for SEBB benefits begins.
- Amended WAC 182-30-080 to clarify information a school employee must indicate when completing required forms, to clarify when the employee's request for a change in their supplemental life insurance becomes effective, and to update a WAC reference.
- Amended WAC 182-31-040 to reorder the eligibility criteria when determining school employees' eligibility.
- Amended WAC 182-31-110 to change supplemental LTD insurance to employee-paid LTD insurance.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; policy resolutions SEBB 2021-11 and SEBB 2021-12.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, 42 C.F.R. § 423.46 and 423.286.

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-3022.1

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

WAC 182-30-040 Premium payments and premium refunds. School employees benefits board (SEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when a SEBB organization is correcting its enrollment error as described in WAC 182-30-060 (4) or (5).

(1) **Premium payments.** SEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which SEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of SEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in continuation coverage as described in WAC 182-31-090, 182-31-100, 182-31-120, or 182-31-130, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than forty-five days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing SEBB medical must be made to the HCA as well as premiums associated with continuing SEBB dental or vision insurance coverage. Premiums associated with life insurance coverage and accidental death and dismemberment (AD&D) coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For school employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the SEBB organization or contracted vendor. If a school employee elects supplemental coverage ((7)) or employee-paid long-term disability (LTD) insurance, or is enrolled in employee-paid LTD insurance, as described in WAC 182-30-080 (1)(a) or (3)(a) or is enrolled in employee-paid LTD insurance as described in WAC 182-30-080 (1)(b) the school employee is responsible for payment of premiums from the month the supplemental coverage or employee-paid LTD insurance begins.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the SEBB organization, subscriber, or a subscriber's legal representative to the HCA or the contracted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber, who is not eligible for the employer contribution, has monthly premiums or applicable premium surcharges remain unpaid for sixty days from the original due date, the subscriber's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan up to twelve months in duration with the subscriber or the subscriber's legal representative upon request.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or the contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for thirty days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or the contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable

premium surcharges remain underpaid for thirty days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the SEBB organization any excess premiums and applicable premium surcharges paid during the (~~three month~~) sixty day adjustment period, except as indicated in WAC 182-31-120.

(b) If a SEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-32-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within sixty days after the event that created a change of premiums, the SEBB director, the SEBB director's designee, or the SEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges that does not exceed twelve months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the SEBB director or the SEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the SEBB organization, subscriber, or beneficiary.

(e) SEBB organization errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the school employee or beneficiary as described in WAC 182-30-060 (4) and (5).

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-040, 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), § 182-30-040, 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), § 182-30-040, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-066, filed 7/28/20, effective 8/28/20)

WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors? (1) A school employees benefits board (SEBB) organization or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify a school employee of their eligibility for SEBB benefits and the employer contribution as described in WAC 182-31-030;

(b) Failure to enroll a school employee or their dependents in SEBB benefits as elected by the school employee, if the election was timely;

(c) Failure to enroll a school employee and their dependents in SEBB benefits as described in WAC 182-30-080 (1)(b);

(d) Failure to accurately reflect a school employee's premium surcharge attestation on the school employee's account;

(e) Enrolling a school employee or their dependents in SEBB insurance coverage when they are not eligible as described in WAC 182-31-040 or 182-31-140 and it is clear there was no fraud or intentional misrepresentation by the school employee involved; or

(f) Providing incorrect information, via a benefits administrator or contracted vendor, regarding SEBB benefits to the employee that they relied upon.

(2) The SEBB organization or the applicable contracted vendor must enroll the school employee and the school employee's dependents, as elected, or terminate enrollment in SEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) Enrollment or termination.

(a) SEBB medical, vision, and dental enrollment is effective at a minimum the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section;

(b) Basic life, basic accidental death and dismemberment (AD&D), ~~((and basic))~~ employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)) enrollment is retroactive to the first day of the month following the day the school employee became newly eligible, or the first day of the month the school employee regained eligibility, as described in WAC 182-30-080;

(c) Supplemental life, supplemental AD&D, and ~~((supplemental))~~ employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the school employee became newly eligible if the school employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the school employee's application for this coverage). If a SEBB organization enrollment error occurred when the school employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-30-080(3) ~~((-))~~ :

(i) Supplemental life and supplemental AD&D is enrolled the first day of the month the school employee regained eligibility, at the same level of coverage the school employee continued during the period of leave, without evidence of insurability.

(ii) If the school employee was eligible to continue supplemental life insurance and supplemental AD&D insurance during the period of leave but did not, the school employee must provide evidence of insurability and receive approval from the contracted vendor.

(iii) School employees may not continue ~~((supplemental))~~ employee-paid LTD insurance while on leave without pay as described in WAC 182-31-100. ~~((Supplemental))~~ Employee-paid LTD insurance is reinstated the first day of the month the employee regains eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(d) If the school employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to (~~three months~~) sixty days prior to the date enrollment is processed, but not earlier than the current plan year. If a school employee was not enrolled in a medical FSA or DCAP as elected, the school employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the school employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's SEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) Premium payments.

(a) The SEBB organization must remit to the authority the employer contribution and the school employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and (~~basic~~) employer-paid LTD insurance starting the date SEBB benefits begin as described in subsections (3) and (5)(a)(i) of this section. If a SEBB organization failed to notify a newly eligible school employee of their eligibility for SEBB benefits, the SEBB organization may only collect the school employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the school employee was notified.

(b) When a SEBB organization fails to correctly enroll the amount of (~~supplemental~~) employee-paid LTD insurance elected by the school employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the school employee is responsible for premiums for the most recent twenty-four months of coverage. The SEBB organization is responsible for additional months of premiums; and

(ii) When a premium refund is due to the school employee, the (~~supplemental~~) LTD insurance contracted vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The SEBB organization is responsible for additional months of premium refunds after the twenty-four months of coverage and the overall re-funding process to the school employee.

(c) When a SEBB organization mistakenly enrolls a school employee or their dependents as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the SEBB organization to the school employee without rescinding the insurance coverage.

(5) Recourse.

(a) School employee eligibility for SEBB benefits begins on the first day of the month following the date eligibility is established or the first day of work for school employees who start on or before the first day of school as described in WAC 182-31-040. Dependent eligibility is described in WAC 182-31-140, and dependent enrollment is described in WAC 182-31-150. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c), and (d) of this section, the SEBB organization must work with the school employee, and receive approval from the authority, to implement retroactive SEBB benefits within the following parameters:

- (i) Retroactive enrollment in a SEBB insurance coverage;
- (ii) Reimbursement of claims paid;

- (iii) Reimbursement of amounts paid by the school employee or dependent for medical, vision, and dental premiums;
 - (iv) Reimbursement of amounts paid by the school employee for the premium surcharges;
 - (v) Other legal remedy received or offered; or
 - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for SEBB benefits.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolution 2020-06. WSR 20-16-066 (Admin #2020-03), § 182-30-060, 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), § 182-30-060, filed 7/1/19, effective 8/1/19.]

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

WAC 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms? A school employee who is newly eligible or who regains eligibility for the employer contribution toward school employees benefits board (SEBB) benefits enrolls as described in this section.

(1) When a school employee is newly eligible for SEBB benefits:

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive (~~((SEBB medical))~~) enrollment provided the school employee is eligible to waive (~~((SEBB medical and elects to waive))~~) as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization or contracted vendor. Their SEBB organization or contracted vendor must receive the forms no later than thirty-one days after the school employee becomes eligible for SEBB benefits under WAC 182-31-040.

(i) The school employee may enroll in supplemental life (~~(and supplemental long term disability (LTD))~~) insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the school employee's SEBB organization or contracted vendor as required. A school employee may apply for enrollment in supplemental life (~~(and supplemental LTD))~~) insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For a school employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. A school employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at anytime without evidence of insurability by submitting the required form to the contracted vendor.

(ii) School employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. A school employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their SEBB organization. A

school employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their SEBB organization or the contracted vendor. For a school employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the SEBB organization receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If the school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee will automatically enroll in the premium payment plan upon enrollment in SEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new school employee must complete the required form and return it to their SEBB organization. The form must be received by their SEBB organization no later than thirty-one days after the employee becomes eligible for SEBB benefits.

~~((iii))~~ (iv) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to their SEBB organization. The form must be received by the SEBB organization no later than thirty-one days after the school employee becomes eligible for SEBB benefits.

(b) If a newly eligible school employee's SEBB organization, or the authority's contracted vendor in the case of life insurance and AD&D, does not receive the school employee's required forms indicating medical, dental, vision, life insurance, AD&D insurance, and LTD insurance elections, and the school employee's tobacco use status attestation within thirty-one days of the school employee becoming eligible, their enrollment will be as follows for those elections not received within thirty-one days:

- (i) A medical plan determined by the health care authority (HCA);
- (ii) A dental plan determined by the HCA;
- (iii) A vision plan determined by the HCA;
- (iv) Basic life insurance;
- (v) Basic AD&D insurance;
- (vi) ~~((Basic))~~ Employer-paid LTD insurance and employee-paid LTD insurance;

(vii) Dependents will not be enrolled; and

(viii) A tobacco use premium surcharge will be incurred as described in WAC 182-30-050 (1)(b).

(2) The employer contribution toward SEBB benefits ends according to WAC 182-31-050. When a school employee's employment ends, participation in the salary reduction plan ends.

(3) When a school employee regains eligibility for the employer contribution toward SEBB benefits, including following a period of leave as described in WAC 182-31-100(1) or ~~((182-31-040(6))~~ 182-31-040 (4)(d), SEBB medical, dental, and vision begin the first day of the month following the school employee's return to work if the SEBB organization anticipates the school employee is eligible for the employer contribution.

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive ~~((SEBB med-~~

~~ical~~) enrollment if the school employee chooses to waive ((SEBB medical)) enrollment as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization except as described in (d) of this subsection. Forms must be received by the SEBB organization, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than thirty-one days after the school employee regains eligibility except as described in (a)(i) and (b) of this subsection:

(i) A school employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) A school employee who was eligible to continue supplemental life ((or supplemental AD&D)) insurance but discontinued that ((SEBB)) supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution.

(b) A school employee does not have to return a form indicating ((supplemental)) employee-paid LTD insurance elections. Their ((supplemental)) employee-paid LTD insurance will be automatically reinstated effective the first day of the month they regain eligibility for the employer contribution toward SEBB benefits.

(c) If a school employee's SEBB organization, or contracted vendor accepting forms directly, does not receive the required forms within thirty-one days of the school employee regaining eligibility, the school employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (viii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to the contracted vendor or their SEBB organization. The contracted vendor or school employee's SEBB organization must receive the form no later than thirty-one days after the school employee becomes eligible for SEBB benefits.

(4) If a school employee who is eligible to participate in the salary reduction plan (see WAC 182-31-060) is hired into a new position that is anticipated to be eligible for SEBB benefits in the same year, the school employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is thirty days or less and within the current plan year. The school employee must notify the new SEBB organization of the transfer by providing the new SEBB organization the required form no later than thirty-one days after the school employee's first day of work with the new SEBB organization.

(5) A school employee will have uninterrupted coverage when moving from one SEBB organization to another within the same month or a consecutive month if they are eligible for the employer contribution towards SEBB benefits in the position they are leaving and are anticipated to be eligible for the employer contribution in the new position. SEBB benefits elections also remain the same when a school employee has a break in employment that does not interrupt their employer contribution toward SEBB benefits.

(6) A school employee returning to the same SEBB organization who is anticipated to work at least six hundred thirty hours in the coming school year, and who was receiving the employer contribution in August

of the prior school year, will receive uninterrupted coverage from one school year to the next.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-080, 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), § 182-30-080, filed 7/1/19, effective 8/1/19.]

OTS-3025.1

AMENDATORY SECTION (Amending WSR 20-16-064, filed 7/28/20, effective 8/28/20)

WAC 182-31-040 How do school employees establish eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and when do SEBB benefits begin? (1) Eligibility shall be determined solely by the criteria that most closely describes the school employee's work circumstance.

(2) All hours worked by an employee in their capacity as a school employee must be included in the calculation of hours for determining eligibility. All hours for which a school employee receives compensation from a school employees benefits board (SEBB) organization during an approved leave (e.g., sick leave, personal leave, bereavement leave) or a paid holiday must be included when determining how many hours a school employee is anticipated to work, or did work, in the school year.

(3) A school employee may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization. A school employee may not gain eligibility by stacking of hours from multiple SEBB organizations.

(4) School employee eligibility criteria shall be determined in the following order:

(a) A school employee is eligible for the employer contribution toward ~~((school employees benefits board (-)))~~ SEBB ~~((+))~~ benefits if they are anticipated to work at least six hundred thirty hours per school year. The eligibility effective date ~~((for a school employee eligible under this subsection))~~ shall be determined as follows:

(i) If the school employee's first day of work is on or after September 1st but not later than the first day of school for the current school year as established by the SEBB organization, they are eligible for the employer contribution on the first day of work; or

(ii) If the school employee's first day of work is at any other time during the school year, they are eligible for the employer contribution on that day.

(b) A school employee ~~((who))~~ is ~~((not anticipated to work at least six hundred thirty hours in the school year becomes))~~ presumed eligible for the employer contribution ((toward SEBB benefits on the date their work pattern is revised in such a way that they are now anticipated to work six hundred thirty hours in)) at the start of the school year, as described in (a) of this subsection, if they:

(i) Worked at least six hundred thirty hours in each of the previous two school years; and

(ii) Are returning to the same type of position (teacher, paraeducator, food service worker, custodian, etc.) or combination of positions with the same SEBB organization.

Note: A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least six hundred thirty hours in the current school year and how to appeal the eligibility determination.

~~(c) ((A school employee who is not anticipated to work at least six hundred thirty hours in the school year becomes eligible for the employer contribution toward SEBB benefits on the date they actually worked six hundred thirty hours in the school year.~~

~~(d))~~ A school employee who is not anticipated to work six hundred thirty hours within the school year because of the time of year they are hired but is anticipated to work at least six hundred thirty hours the next school year, establishes eligibility for the employer contribution toward SEBB benefits as of their first working day if they are:

(i) A nine to ten month school employee anticipated to be compensated for at least seventeen and one-half hours a week in six of the last eight weeks counting backwards from the week that contains the last day of school; or

(ii) A twelve month school employee anticipated to be compensated for at least seventeen and one-half hours a week in six of the last eight weeks counting backwards from the week that contains August 31st, the last day of the school year.

~~((3) All hours worked by an))~~ (d) A school employee who returns from approved leave without pay will maintain or establish eligibility for the employer contribution toward SEBB benefits if their work schedule, had it been in effect at the start of the school year, would have resulted in the school employee being anticipated to work the minimum hours to meet SEBB eligibility for the employer contribution in the school year. A school employee who regains eligibility under this subsection, establishes eligibility for the employer contribution toward SEBB benefits as of the date they returned from approved leave without pay.

(5) A school employee ((in their capacity as a school employee must be included in the calculation of)) who is not anticipated to work at least six hundred thirty hours ((for determining eligibility. All hours for which a school employee receives compensation from a SEBB organization during an approved leave (e.g., sick leave, personal leave, bereavement leave) or a paid holiday must be included when determining how many hours a school employee is anticipated to work, or did work,)) in the school year as described in subsection (4)(a) of this section, may later be eligible for SEBB benefits when:

(a) Their work pattern is revised in such a way that they are now anticipated to work six hundred thirty hours in the school year. The school employee becomes eligible for the employer contribution toward SEBB benefits on the date their work pattern is revised; or

(b) They actually worked six hundred thirty hours in the school year. The school employee becomes eligible for the employer contribution toward SEBB benefits on the date they actually worked six hundred thirty hours.

~~((4) A))~~ (6) If the school employee ((may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization. A school employee may not gain eligibility by stacking of hours from multiple SEBB organizations.

~~(5) A school employee is presumed eligible for the employer contribution at the start of the school year, as described in subsection (2)(a) of this section, if they:~~

~~(a) Worked at least six hundred thirty hours in each of previous two school years; and~~

~~(b) Are returning to the same type of position (teacher, paraeducator, food service worker, custodian, etc.) or combination of positions with the same SEBB organization.~~

Note: A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least six hundred thirty hours in the current school year and how to appeal the eligibility determination.

~~(6) A school employee who returns from approved leave without pay will maintain or establish eligibility for the employer contribution toward SEBB benefits if their work schedule, had it been in effect at the start of the school year, would have resulted in the school employee being anticipated to work the minimum hours to meet SEBB eligibility for the employer contribution in the school year. A school employee who regains eligibility under this subsection establishes eligibility for the employer contribution toward SEBB benefits as of the date they returned from approved leave without pay) is not eligible under subsection (4) or (5) of this section, they may be eligible for SEBB benefits if their SEBB organization is engaging in local negotiations regarding eligibility for school employees as described in WAC 182-30-130.~~

(7) When SEBB benefits begin:

(a) For a school employee who establishes eligibility under subsection ~~((+2-))~~ (4) (a) (i) of this section, medical, dental, vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, ~~((basie))~~ employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)), and if eligible, benefits under the salary reduction plan begin on the first day of work for the new school year. Supplemental life insurance ~~((r))~~ and supplemental AD&D insurance ~~((r and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(b) For a school employee who establishes eligibility under subsection ~~((+2-))~~ (4) (a) (ii), ~~((+b-r))~~ (c), (d), or ~~((+6-))~~ (5) of this section, medical, dental, vision, basic life insurance, basic AD&D insurance, ~~((basie))~~ employer-paid LTD insurance, employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the date the school employee becomes eligible for the employer contribution toward SEBB benefits. Supplemental life insurance ~~((r))~~ and supplemental AD&D insurance ~~((r and supplemental LTD insurance))~~ begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

Exception: When a school employee establishes eligibility for the employer contribution toward SEBB benefits as described under subsection ~~((2)(b) or (e), or (6))~~ (4)(d) or (5) of this section, at any time in the month of August, SEBB benefits begin on September 1st only if the school employee is also determined to be eligible for the employer contribution toward SEBB benefits for the school year that begins on September 1st.

~~((8) If the school employee is not eligible under subsections (1) through (6) of this section, they may be eligible for SEBB benefits if their SEBB organization is engaging in local negotiations re-~~

garding eligibility for school employees as described in WAC 182-30-130.)

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions 2020-01, 2020-02, and 2020-05. WSR 20-16-064 (Admin #2020-01), § 182-31-040, 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), § 182-31-040, 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), § 182-31-040, filed 12/14/18, effective 1/14/19.]

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

WAC 182-31-110 What options are available if a school employee is approved for the federal Family and Medical Leave Act (FMLA) or the paid family and medical leave program? (1) A school employee on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward school employees benefits board (SEBB) benefits in accordance with the federal FMLA. The school employee may also continue current supplemental life, supplemental accidental death and dismemberment (AD&D), and (~~supplemental~~) employee-paid long-term disability (LTD) insurance. The school employee's SEBB organization is responsible for determining if the school employee is eligible for leave under FMLA and the duration of such leave.

(2) A school employee on approved leave under the paid family and medical leave program under chapter 50A.05 RCW may continue to receive the employer contribution toward SEBB benefits in accordance with RCW 50A.35.020. The school employee may also continue current supplemental life, supplemental AD&D, and (~~supplemental~~) employee-paid LTD insurance. The employment security department is responsible for determining if the school employee is eligible for the paid family and medical leave program.

(3) If a school employee exhausts the period of leave approved under FMLA or paid family and medical leave, SEBB benefits may be continued by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the SEBB organization, as described in WAC 182-31-100(1).

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-110, 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), § 182-31-110, 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), § 182-31-110, filed 12/14/18, effective 1/14/19.]

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

WAC 182-31-120 What options for continuation coverage are available to school employees during their appeal of a grievance? (1) A school employee awaiting the hearing outcome of a grievance action before any of the following may continue their school employees benefits board (SEBB) insurance coverage by self-paying the premium and applicable premium surcharges set by the health care authority (HCA), with no contribution from the SEBB organization, on the same terms as a school employee who is granted leave as described in WAC 182-31-100(1):

- (a) An arbitrator;
 - (b) A grievance or appeals committee established under a collective bargaining agreement for union represented employees; or
 - (c) A court.
- (2) The school employee must pay premium amounts and applicable premium surcharges associated with SEBB insurance coverage as premiums and applicable premium surcharges become due. If the monthly premium or applicable premium surcharges remain unpaid for sixty days from the original due date, SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1) (c).

(3) If the dismissal is upheld, all SEBB insurance coverage will terminate at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection (4) of this section.

(4) If the dismissal is upheld and the school employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the school employee may continue SEBB medical, dental, vision, or any combination of them for the remaining months available under COBRA. See WAC 182-31-090 for information on COBRA. The number of months the school employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

(5) If the arbitrator, committee, or court sustains the school employee in the appeal and directs reinstatement of SEBB organization paid SEBB insurance coverage retroactively, the SEBB organization must forward to HCA the full employer contribution for the period directed by the arbitrator, committee, or court and collect from the school employee the school employee's share of premiums due, if any.

(a) When the employer contribution is reinstated, HCA will refund premiums and applicable premium surcharges the school employee paid only if the school employee retroactively pays their employee contribution amounts for SEBB benefits. In the alternative, at the request of the school employee, HCA may deduct the school employee's contribution amount for SEBB benefits from the refund of premiums and applicable premium surcharges self-paid by the school employee during the appeal period.

(b) All supplemental life insurance (~~and~~), supplemental accidental death and dismemberment (AD&D) insurance, and employee-paid long-term disability (LTD) insurance that was in force at the time of dismissal shall be reinstated retroactively only if the school employee makes retroactive payment of premium for any such supplemental coverage and employee-paid LTD insurance that was not continued by self-payment during the appeal process. If the school employee chooses not to pay the retroactive premium, evidence of insurability will be re-

quired to enroll in such supplemental coverage and employee-paid LTD insurance.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-120, 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), § 182-31-120, filed 7/1/19, effective 8/1/19.]