

WSR 23-14-018

PERMANENT RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2023-01—Filed June 23, 2023, 9:15 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose of this proposal is to amend some of the existing rules to support the School Employees Benefits Board (SEBB) Program:

1. Make technical amendments: Amended WAC 182-30-100 to move notes to subsection (2) and add language to address when a school employee who enrolls in a high deductible health plan with a health savings account during the annual open enrollment and has a carryover amount from a medical flexible spending arrangement; and amended WAC 182-31-080 to clarify when a school employee may waive enrollment in SEBB medical.

2. Amend rules to improve the administration of the SEBB Program: Amended WAC 182-31-030 to add a new requirement that a SEBB organization must assist a school employee in determining whether or not the school employee or their dependent has experienced an event that creates a special open enrollment.

Citation of Rules Affected by this Order: Amending WAC 182-30-100, 182-31-030, 182-31-080.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-10-063 on May 2, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4506.2

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? A school employee who is eligible to participate in the salary reduction plan as described in WAC

182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their SEBB organization or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

((Note:

1. School employees cannot enroll in a medical FSA and a limited purpose FSA in the same year.

2. School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect enrollment in the HDHP with a HSA and a medical FSA will instead be enrolled in a limited purpose FSA.

3. School employees who are not enrolled in a HDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.))

(a) School employees cannot enroll in a medical FSA and a limited purpose FSA in the same year.

(b) School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect enrollment in the HDHP with a HSA and a medical FSA will only be enrolled in a HDHP with a HSA.

(c) If a school employee enrolls in a HDHP with a HSA during annual open enrollment and has a carryover amount from a medical FSA, the school employee will be enrolled in a limited purpose FSA and the carryover amount will be deposited into the limited FSA.

(d) School employees who are not enrolled in a HDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when

any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective 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, the enrollment or change in election begins 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, the enrollment or change in election will begin the first of the month in which the event occurs.

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

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution toward their employer-based group health plan;

Exception: As used in (a)(v) 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.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) 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 resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) 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;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent enrolls in coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current medical plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;
- Treatment following a recent organ transplant;
- A scheduled surgery;
- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available, and the subscriber changes their election. The subscriber may change their election if the change in employment causes:

- The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or
 - The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.
- As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA and limited purpose FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the

event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins 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, the enrollment or change in election will begin the first of the month in which the event occurs.

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

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA or limited purpose FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent enrolls in coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins 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, the enrollment or change in election will begin the first of the month in which the event occurs.

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

- Marriage;
- Registering a state registered domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based DCAP during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b) (1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

OTS-4508.2

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

WAC 182-31-030 What are the obligations of a school employees benefits board (SEBB) organization in the application of school employee eligibility? (1) All school employees benefits board (SEBB) organizations must carry out all actions, policies, and guidance issued by the SEBB program which are necessary for the operation of benefit plans, education of school employees, claims administration, and appeals process including those described in chapters 182-30, 182-31, and 182-32 WAC. SEBB organizations must:

(a) Use the methods provided by the SEBB program to determine eligibility and enrollment in benefits;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the SEBB program;

(c) Support SEBB program auditing of eligibility and enrollment decisions as needed; and

(d) Carry out corrective action and pay any penalties imposed by the health care authority (HCA) and established by the board when the SEBB organization's eligibility determinations fail to comply with the criteria under these rules.

(2) SEBB organizations must determine school employee eligibility for SEBB benefits and the employer contribution according to the criteria in WAC 182-31-040 and 182-31-050. SEBB organizations must:

(a) Notify newly hired school employees of SEBB program rules and guidance for eligibility and appeal rights;

(b) Inform a school employee in writing whether or not they are eligible for SEBB benefits upon employment. The written notice must include information about the school employee's right to appeal eligibility and enrollment decisions. A school employee eligible for SEBB benefits must have no less than ~~((ten))~~ 10 calendar days after the date of notice to elect coverage;

(c) Routinely monitor all school employees work hours to establish eligibility and maintain the employer contribution toward SEBB benefits;

(d) Identify when a previously ineligible school employee becomes eligible or a previously eligible school employee loses eligibility; and

(e) Inform a school employee in writing whether or not they are eligible for SEBB benefits and the employer contribution whenever there is a change in work pattern such that the school employee's eligibility status changes. Whenever this occurs, SEBB organizations must inform the school employee of the right to appeal eligibility and enrollment decisions. A school employee eligible for SEBB benefits must have no less than ~~((ten))~~ 10 calendar days after the date of notice to elect coverage.

(3) SEBB organizations must determine school employee's dependents eligibility for SEBB benefits according to the criteria in WAC 182-31-140.

(4) SEBB organizations must assist a school employee in determining whether the school employee or their dependent has experienced an event that creates a special open enrollment as described in WAC 182-30-090, 182-30-100, 182-31-080, or 182-31-150, and inform the school employee of the changes they can make consistent with that event.

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

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 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 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 31 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 60 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 60 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 60 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 or their dependent's 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.