

**STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYEE TRUST FUNDS  
& GROUP INSURANCE BOARD**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE #04-075**

**FINAL RULE** to amend ETF 40.10 (1) and (2), and create ETF 40.10 (2) (d) regarding the contributions towards employee health insurance premiums by local units of government that participate in the group health insurance plans established by the state of Wisconsin, group insurance board.

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**Agency Person to be Contacted for Questions**

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**Statement Explaining Need for Rule**

The rule permits local units of government a new option with respect to making contributions towards the group health insurance premiums of employees. At present, local government employers are prohibited from contributing more than 105% of the lowest cost qualified plan in the employer's service area. While the 105% formula encourages competition between health plans based on premiums, it may not be as effective as a tiered plan arrangement in encouraging health plans to be as efficient as possible and thereby holding down premiums in the long run.

**Analysis Prepared by the Department of Employee Trust Funds**

**1. Statute interpreted:**

None.

## 2. Statutory authority:

This proposed rule will be promulgated under the authority granted to the department of employee trust funds (DETF) and the group insurance board under ss. 40.03 (2) (ig) and (6) (d) and 40.51 (1) and (7), Stats.

## 3. Explanation of agency authority:

The DETF is authorized by s. 40.51 (7), Stats., to vary some aspects of the group health insurance plan for local employers, expressly including establishing employer contribution provisions that differ from those for the state. The DETF secretary is charged by s. 40.03 (2) (ig) with promulgating, with the approval of the group insurance board, all rules necessary to administer the group health insurance programs. The group insurance board has broad authority under s. 40.03 (6) (d) to take actions, as trustees, that the board deems advisable. The board has authority under s. 40.51 (1) to set premium provisions by rule.

## 4. Related statute or rule:

Sections 40.05 (4) (ag) and 40.51 (6), Stats., as affected by 2003 Wis. Act 33.

## 5. Plain language analysis:

The state of Wisconsin group insurance board offers a group health insurance program to local government employers, including the same alternate plans (such as HMOs) available to state employees in the area. This rule will allow local governments that participate in the board's group health plan to use an alternative to the present system of contributing to health insurance premiums.

At present, local government employers are required to contribute an amount between 50% and 105% of the lowest cost qualified plan towards the health insurance premiums of their insured employees. A lesser contribution is required for part-time employees and no minimum contribution is required for insured retirees. The existing s. ETF 40.10 was loosely based on former s. 40.05 (4) (ag) 2., Stats., which set the state's premium contribution for its employees at the lesser of 90% of the standard plan premium or 105% of the least costly qualifying plan within the county, but not more than the total amount of the premium. The state's contribution could be modified through collective bargaining.

The proposed rule will allow Wisconsin public employers offering their employees group health insurance under s. 40.51 (7) the option of adopting a tiered premium strategy, similar to that used by the state, as a means of containing health insurance costs.

Effective January 1, 2004, s. 40.05 (4) (ag) was repealed and recreated by 2003 Wis. Act 33 to alter state contributions towards health insurance for state

employees. The same legislation also amended s. 40.51 (6), Stats., which now requires the group insurance board to place each of the health plans offered to state employees into one of three tiers. The tiers are separated according to the employee's premium costs and the efficiency of the health plan in serving its risk pool, as determined by the department.

Local government employees have access to the same HMOs and essentially the same health plans as offered to state employees in their area. The proposed rule will allow the group insurance board to establish tiers for the health plans as offered to local government employers. The tier into which a plan is placed may be the same as for state employees or may be different if the board and its actuary determine that the plan as offered to local employees, and its premium, warrants a different placement. Under the proposed rule, local government employers could use the tiers established by the board as a basis for their premium contribution arrangement.

Under the proposed rule, if the local government employer adopts a tiered plan arrangement, the local government employer must always contribute at least 50% of the lowest cost qualified plan in the employer's service area (or 25% for part-time employees), as is required under the 105% formula. The employee's contribution must be the same amount for all plans in each tier. Also the employee's portion of the monthly premium must increase for plans in higher tiers by at least \$20 for single coverage and \$50 for family coverage, for each successively higher tier. Under some circumstances, that requirement may force the employer's minimum contribution towards Tier 1 plans to be higher than one-half of the lowest cost qualified plan.

At present an employer may not contribute more than 105% of the premium for the lowest cost qualified plan in the employer service area as defined by the department. If the local government employer adopts the tiered plan approach, that cap does not apply.

The proposed rule does not directly alter local government health insurance costs.

However, the rule change would allow local government employers more options in setting their future share of premiums.

Many local government employers base premium contributions on collectively bargained agreements. The proposed rule cannot impair existing contracts and so could have no effect on premium contributions being made under existing collective bargaining agreements until the existing agreements expire or are amended or otherwise renegotiated.

The proposed rule also amends the current language of s. ETF 40.10 in conformity with 1999 Act 185, section 193. That Act section provided that wherever "employe," "employees," "employee's" or "employees' " appear in the statutes, "employee," "employees," "employee's" or "employees' " are substituted.

6. Summary of, and comparison with, existing or proposed federal regulations:

There are no existing or proposed federal regulations applicable to the subject matter of this rule.

7. Comparison with rules in adjacent states:

A search of legal databases on state administrative regulations has located no similar rules in adjacent states.

8. Summary of factual data and analytical methodologies:

The legislature required a change with respect to state contributions towards health insurance for state employees. One reason for the change was because the previous contribution strategy, the so-called "105% formula," was perceived as no longer being as effective as possible in holding down increases in health insurance premiums by health plans. The 105% formula emphasized competition in premium rates between plans in order to hold down premiums. However, the 105% formula tends to reward the plan that sets its premium as closely as possible to 105% of the lowest cost plan.

The tiered plan strategy is based on rewarding a plan's efficiency in serving the plan's risk pool. The most efficient plans, as determined by the department and group insurance board, are placed in Tier 1. The tiered approach is believed to better encourage health plans to become more cost efficient, thereby holding down the cost of health insurance in the long run. The board has decided that local units of government should be provided with access to the same tool to encourage cost efficiency in order to contain their own health care costs.

Under the proposed rule, participating Wisconsin public employers may continue to base their employer contribution solely on the so-called "105% formula," or alternatively, on the health plan tiers.

9. Analysis and documents used to determine effect on small business:

The term "employer" is defined by s. 40.02 (28), Stats., and does not include any small businesses or any private sector employer.

10. Anticipated costs incurred by private sector:

None.

11. Statement of effect on small business:

The rule has no effect on small businesses.

**Regulatory Flexibility Analysis:**

The proposed rule has no effect on small businesses because only governmental employers may participate in the group health insurance programs under ch. 40 of the statutes.

**Fiscal Estimate:**

The proposed rule has no direct fiscal impact. The proposed rule generates no revenues for any employer. The proposed rule itself has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The proposed rule only applies to the local government units electing to participate in the Group Insurance Board's group health program. The intended effect of the rule is to allow these employers an option that may reduce increases in future health care costs. Nothing in the rule, however, requires any employer to change its present contribution arrangement. The rule has no state fiscal effect during the current biennium and no fiscal impact on state funds.

**Text of Rule**

SECTION 1. ETF 40.10 (1) and (2) are amended to read:

ETF 40.10 (1) An ~~employee~~ employee of an employer, other than the state, shall be eligible for health insurance under s. 40.51 (7), Stats., if the requirements of ss. 40.02 (46) and 40.22 or of s. 40.19 (4) (a), Stats., are satisfied.

(2) The employer shall pay an employer contribution toward the gross health insurance premium based on the lowest cost qualified plan in the service area of the employer, as follows:

(a) For insured part-time ~~employees~~ employees who are appointed to work less than 1,044 hours per year, an amount not less than 25% of the lowest cost qualified plan.

(b) For eligible ~~employees~~ employees not specified in par. (a) or (c), an amount between 50% and, except as provided in par. (d), 105% of the lowest cost qualified plan.

(c) For a retiree, surviving dependent or an eligible ~~employee~~ employee on leave of absence or layoff, an employer contribution is optional.

SECTION 2. ETF 40.10 (2) (d) and (e) are created to read:

ETF 40.10 (2) (d) The 105%-of-cost limitation in par. (b) does not apply to an employer that establishes an arrangement for contributing towards the premiums for employee health insurance under s. 40.51 (7) under which all of the following apply:

1. The employer contributions towards employee health insurance premiums are based upon the tier into which each available health plan is placed by the group insurance board.

2. The employee required contribution to the health insurance premium for single coverage is the same dollar amount for all plans in the same tier, regardless of the total premium. The employee required contribution to the health insurance premium for family coverage is the same dollar amount for all plans in the same tier, regardless of the total premium.

3. The employee's required contribution to the health insurance premium for a plan classified in a higher cost tier, as compared to a plan in the next lowest cost tier, increases by at least \$20 per month for single coverage and \$50 per month for family coverage.

4. The employer contribution towards the premium of each qualified plan in the service area of the employer shall be an amount at least equal to the applicable

minimum contribution under par. (a), (b) or (c). The employer contribution is determined by subtracting the employee contribution amount for the plans in that tier from the total plan premium for the type of coverage.

Example. Assume there are only two qualified plans in the service area of the employer. One plan is a Tier 1 plan, the other is a Tier 2 plan, and the single and family premiums are shown in the following table:

**Table 1. Premium rates for 2 hypothetical qualified plans.**

Plan	Tier	Single	Family
A	1	\$400.00	\$900.00
B	2	\$410.00	\$1,000.00

Under the tiered arrangement, a full-time employee's premium payment for Plan A (and all Tier 1 plans that might be available, but not qualified) may be between \$0 and a maximum of \$190 for single coverage, depending on whether the employer is contributing the minimum amount allowed, or more. The employer must contribute no less than \$200 towards single coverage, but under these circumstances must contribute at least \$210 towards single coverage premium for Tier 1 plans, because that is the lowest amount that is at least equal to one-half of the lowest cost plan and also sufficient to assure both (1) that the employee contribution for single coverage under the Tier 2 plan will be at least \$20 higher than the Tier 1 amount and (2) that the remainder, paid by the employer, will be at least \$200. The employer contribution towards family coverage must be at least \$450. This is one-half of the lowest cost plan premium for family coverage and is also sufficient to assure that the difference between the employee premiums for the Tier 1 and Tier 2 coverage is at least \$50.

(e) The group insurance board, with the advice of the actuary, may classify a health plan offered to local government employees in a tier that is different than that of the health plan of the same name as offered to state employees.

(end of rule text)

**Effective Date**

This rule shall take effect on the later of January 1, 2005, or the first day of the month following publication in the Wisconsin Administrative Register as provided in Wis. Stat. s. 227.22 (2).

**Legislative Council Staff Clearinghouse Report on CR #04-075**

Insert Page 1 of Legislative Council Clearinghouse Report here

**Legislative Council Staff Clearinghouse Report on CR #04-075**

Insert Page 2 of Legislative Council Clearinghouse Report here

**Legislative Council Staff Clearinghouse Report on CR #04-075**

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## **Response to Legislative Council Staff Recommendations**

The DETF implemented the Legislative Council Staff recommendation to renumber and redraft SECTION 2 of the proposed rule in order to more clearly express the intent of the department and the group insurance board. However, the Legislative Council Staff's suggested use of the term "health insurance plan" was rejected as a misuse of the term. The rule does not authorize employers to establish health insurance plans, only arrangements for paying premiums under the Group Insurance Board's program.

The text of the rule was modified accordingly. These modifications affected the analysis and s. ETF 40.10 (2) (d) and (e).

## **List of Persons Appearing or Registering For or Against the Rules.**

No persons registered either for or against the rule at the public hearing on August 8, 2003.

## **Summary of Comments Received at Public Hearing.**

No person wished to testify concerning the rule. The record was held open for written comments until 4:30 p.m. on August 11, but no comments were received. A number of people attended the public hearing, and an informal discussion among those attending and DETF staff took place after the hearing record was formally closed.

## **Modifications to Rule as Originally Proposed as a Result of Public Comments**

The rule text has been considerably revised, mainly to adopt the suggestions of the Legislative Council Staff. Comments during an informal discussion at the time of the public hearing indicated that at least some employers would find it helpful if the rule text was supplemented with examples of its application. Also, some questioners wondered whether the employer's obligation under the tiered plan arrangement could be satisfied by contributing a flat dollar amount, regardless of the actual total premium. That is not permitted. The rule text is modified to clarify the employer's contribution requirements under a tiered plan structure by specifying that the employee's payment for the same coverage under each plan in the same tier is the same dollar amount, and to provide examples to further clarify the application of the rule.

**Modifications to the Analysis Accompanying the Proposed Rule.**

The original analysis has been slightly revised. The requirement that the employee cost for like coverage under all plans in the same tier is the same, which was added to the rule text, is also now mentioned in the analysis. Also, some discussion of the key factor involved in the placement of plans in tiers has been added. This is the evaluation of each plan's efficiency with respect to serving its risk pool, as determined by the department. Other minor changes in the analysis are editorial, not substantive.

**Modifications to the Initial Fiscal Estimate**

None.

**Board Authorization for Promulgation**

This final draft report on Clearinghouse Rule #04-075 has been duly approved for submission to the Legislature and for promulgation by the Department of Employee Trust Funds and by the Group Insurance Board at its meeting on August 24, 2004.

Respectfully submitted,

DEPARTMENT OF EMPLOYEE TRUST FUNDS

/s/

August 25, 2004

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Eric O. Stanchfield, Secretary  
Wisconsin Department of Employee Trust Funds