



STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax (608) 267-4549
<http://etf.wi.gov>

CORRESPONDENCE MEMORANDUM

DATE: March 22, 2013
TO: Group Insurance Board (GIB) Strategic Planning Workgroup
FROM: Bill Kox, Deputy Administrator, Division of Insurance Services
SUBJECT: Tobacco Use Surcharge Update

This memo updates the Workgroup on discussion to date concerning the proposed tobacco use surcharge.

The Governor's budget proposes to create Wis. Stat. 40.03 (6) (cm).

SECTION 715. 40.03 (6) (cm) of the statutes is created to read:

40.03 (6) (cm) 1. Notwithstanding ss. 111.321, 111.322, and 111.35, beginning in 2014, the group insurance board shall impose a premium surcharge for health care coverage under ss. 40.51 (6) and 40.515 for eligible employees who use tobacco products and may terminate the health care coverage of any eligible employee who falsely claims that he or she does not use tobacco products.

2. The premium surcharges paid by annuitants who use tobacco products shall be used to reduce future health care coverage premiums for annuitants and to reimburse the department for costs incurred by the department in providing health care coverage to annuitants. Annually, the secretary of administration shall determine the surcharge amounts that are to be used to reimburse the department for costs incurred by the department in providing health care coverage to annuitants and shall transfer that amount to the appropriation account under s. 20.515 (1) (w).

Highlights of the proposal include:

- Non-statutory provisions set the surcharge at \$50 per month for 2014-15.
- Surcharge amounts paid by annuitants are to be used to reduce future coverage premiums and Employee Trust Funds (ETF) costs incurred in providing health care.

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- The Department of Administration Secretary annually determines the amount of surcharge transferred to ETF to reimburse these costs.
- The surcharge applies to eligible employees and annuitants. Wis. Stat. 40.51 (6) limits it to state employees and s. 40.515 refers to proposed high deductible health plans and health savings accounts for state employees.
- The GIB shall impose the premium surcharge.

A number of issues are not addressed in the proposed statute. These include:

- How will the GIB determine which employees are subject to the surcharge?
- Is the surcharge an add-on to employee contribution or an add-on to total premium? Will this be similar for annuitants?
- Can sick leave credits be used to pay the surcharge?
- What is considered "tobacco use" and how do federal rules affect this definition?

In addition to these issues, there are various considerations involved in surcharge administration. We are in the early stages of discussing and developing alternatives with the Administration and ETF staff.

Surcharge Administration

ETF identified the following considerations as the first steps in structuring the program for administering the surcharge. Assumptions and decision points involve ETF systems, health plans, premium rates for employees and annuitants and the potential selection of contracted vendors.

Attestation Administration. We currently envision a vendor collecting the employee and annuitant tobacco use attestations and feeding this information to ETF's MyETF Benefits system. We expect an initial round of attestations for all employees would be collected prior to January 1, 2014, perhaps coinciding with the annual It's Your Choice period. We will need to consider whether attestations are to be completed annually, and/or whether interim attestations will be needed for changes in tobacco use status.

MyETF Benefits System. This ETF administered electronic eligibility, enrollment and premium payment system will need to be modified to provide a tobacco use field that will identify those subject to the surcharge.

Employers and/or their payroll systems will need a mechanism for identifying tobacco use status. Options include receiving the information from ETF through MyETF Benefits or receiving it directly from the contracted vendor who would collect member specific tobacco use attestations.

Employer cost reductions. Options for building the \$50 surcharge into the premium include a separate surcharge added to premium or separate premium rates for

tobacco users vs. non-users. In either scenario, a mechanism will need to be developed to funnel the surcharge funds back to the employer. If the surcharge is to be an add-on, this will be a flat amount regardless of the current Tier amount of the employee contribution.

For example, if a Tier 1 contribution for regular employees is \$85, (the current amount in 2013), a tobacco user could be charged \$135. A state patrol classified employee who pays \$31 for a Tier 1 plan could pay \$81.

In the interest of both administrative ease and fairness to our members, the preferred approach developed by ETF staff is to add on the surcharge, as outlined in the following chart.

	Total Premium	Employer Contribution	Employee Contribution	Employee Surcharge	Total Premium Collection	Amount Returned to Employer
Active Non-Tobacco User	\$585	\$500	\$85	\$0	\$585	\$0
Active Tobacco User	\$585	\$500	\$85	\$50	\$635	\$50
Annuitant Tobacco User	\$585	\$0	\$585	\$50	\$635	\$0*

**annuitant surcharge amount remains in Trust Fund and requires DOA approval to spend to offset program costs.*

The add-on alternative has the effect of providing an immediate dollar-for-dollar reduction in the employer cost.

Annuitants. Annuitants pay the entire premium, either through their sick leave, via annuity deduction, or directly to the insurance carrier. The surcharge must therefore be in addition to the total premium, resulting in two premium rate classes for annuitants.

Since the surcharge is part of the premium, it will be included in the premium payment, and annuitants can use sick leave credits to pay the surcharge.

The surcharge also applies to surviving dependents who apply for coverage as subscribers, since they are defined to be eligible employees.

Health plans. If only one premium rate will be calculated per plan, we do not anticipate the need to calculate separate premiums for tobacco users vs. non-tobacco users. This would simplify billing administration. However, plans would still need to add-on the surcharge for direct-pay contracts.

Continuants. Individuals on state or federal continuation are not subject to the requirement since they do not meet the definition of eligible employee under Wis. Stats. 40.02(25).

Termination of Coverage by GIB. The proposed statute provides the GIB may terminate health plan coverage for any employee who falsely claims they are a non-tobacco user. However, recent federal law guidance on the Affordable Care Act appears to prohibit the termination of coverage. Instead, members must be allowed to re-file their attestations. In either event, this will require development of guidelines for determining how information on members who file false attestations will be collected and utilized. The GIB will also need to consider whether, in cases where an employee is found to be a tobacco user, if the surcharge will be collected retroactively for the current calendar year, or forward from the date of the re-filed attestation.

Federal Regulations. In addition to the limitation on termination of coverage, federal law has the following implications.

- A tobacco use surcharge must be applied in conjunction with an employee wellness program.
- An alternate means of achieving the incentive (or in this case avoiding the negative incentive) must be provided to employees whose physician determines the member cannot meet the requirement for medical reasons. For example, could a member with anxiety issues have their physician certify that it would be inadvisable for that member to quit using tobacco?
- No definition of tobacco use can have a look back period of more than six months.
- No definition of tobacco use can include a member who uses tobacco three or fewer times per week.
- Any wellness program must provide for the use of tobacco cessation counseling and pharmacological aids. Standard cost sharing may apply to the pharmacological aids but not to the physician visit.
- The \$50/month surcharge is allowable under federal limits.

Uniform Benefits. Depending upon the final determination of the impact that federal rules may have on the surcharge program, the Uniform Benefits certificate may need to be modified subsequent to its consideration at the upcoming May 21, 2013 GIB meeting. Issues that may need to be addressed could include advising members of grievance procedures, co-payment schedules for prescription drugs and/or office visits,

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or the addition of therapies or counseling sessions associated with tobacco cessation attempts. Staff will be seeking authority to make such adjustments as needed.

Staff will be available at the Workgroup meeting to address comments and questions.