Chapter ETF 40

HEALTH CARE BENEFITS

ETF 40.01 Coverage of an insured surviving dependent. (1) DEATH OF INSURED EMPLOYEE DOES NOT TERMINATE COVERAGE FOR SURVIVING INSURED DEPENDENTS. (a) *Scope.* This section applies only when an insured employee had family health insurance coverage under s. 40.51, Stats., in effect at the time of his or her death and was survived by persons who were insured under that family coverage at the time of the death.

Note: The term "insured employee" is defined by s. 40.02 (39), Stats.

(b) *Family coverage of all surviving insured dependents continues.* The family coverage as in effect at the time of the death of the insured employee will continue in effect, covering the dependents who were duly insured under that coverage at the time of that death until all dependents lose eligibility or become insured under another health insurance policy and as approved by the department.

Note: The term "dependent" is defined for group health insurance purposes by s. ETF 10.01 (2) (b).

(c) *Other continuation coverage rights preserved.* Nothing in this section shall be construed to interfere with any person's right to apply or eligibility for continued health insurance coverage under the terms and conditions of the group health insurance contract as expressly mandated by s. 40.51 (3), (4) or (5), Stats., referencing s. 632.897 (2) (b) 3., Stats., or under 42 USC 300bb−1 and federal regulations prescribed thereunder.

Note: Section 632.897 (2) (b) 3., Stats., is a statute enforced by the Office of the Commissioner of Insurance. It provides that the spouse or dependent of a group member, who died while covered by a group policy, may elect to continue coverage under the group policy or convert to individual coverage, provided the person had been continuously covered under the group policy for at least three months before the death. Under 42 USC 300bb−1, a provision of the federal Public Health Service Act, the Secretary of the U.S. Department of Health and Human Services may prescribe regulations concerning continuation coverage for individuals under group health plans maintained by certain states or political subdivisions thereof, or an agency or instrumentality of certain states or political subdivisions thereof.

(2) COVERAGE LIMITED TO SURVIVING INSURED DEPENDENTS; EXCEPTION. (a) Except as provided in par. (b), no new dependents may be added to the family coverage in effect under this section and single coverage under this section may not be changed to family coverage to cover anyone except surviving insured dependents of the deceased insured employee.

(b) Notwithstanding par. (a), the group insurance board may provide by contract that some or all of the following persons may also be covered by the family coverage under this section.

1. Persons previously insured under the group insurance board health insurance contract as dependents of the deceased insured employee, who would have been eligible to resume such coverage if the insured employee had lived.

2. A child of the deceased insured employee who first became eligible for coverage under the group insurance board health insurance contract after the death of the insured employee.

Note: A copy of the applicable group health insurance contract may be obtained at no charge by writing to: department of employee trust funds, division of insurance services, P.O. Box 7931, Madison, WI 53707−7931, or by calling (608) 266−3285 or toll free at (877) 533−5020.

(2m) RESPONSIBLE PERSON. (a) *Multiple surviving insured dependents, with surviving spouse or domestic partner.* If the deceased insured employee is survived by a spouse or domestic partner and other dependents of the deceased insured employee, then the family coverage shall continue in effect and the surviving spouse or domestic partner shall be the responsible person and have the same control and responsibilities with respect to the insurance coverage of the insured surviving dependents as the insured employee had while living except that the responsible person may split any converted sick leave credits among surviving insured dependents as approved by the department.

(b) *Multiple surviving insured dependents, without surviving spouse or surviving domestic partner.* If the deceased insured employee is not survived by a spouse or domestic partner but by more than one insured dependents, then the family coverage will continue in effect. The oldest surviving insured dependent, or that person's guardian, shall be the responsible person and have the same rights and responsibilities with respect to the insurance coverage of the insured surviving dependents as the insured employee had while living except that the responsible person may split any converted sick leave credits among surviving insured dependents as approved by the department. Upon reasonable request from any adult surviving insured dependent or the guardian of any minor surviving insured dependent, the department may designate another surviving insured dependent, or that person's guardian, as the responsible person.

(3) DURATION OF CONTINUING COVERAGE. (a) *Surviving spouse or surviving domestic partner.* A surviving spouse or surviving domestic partner entitled to insurance coverage under this section and s. 40.02 (25) (b) 3., Stats., is entitled to continuous coverage under this section for life, unless sooner cancelled voluntarily or for non−payment of premiums. A suspension of coverage because of the operation of s. 40.05 (4) (b) or (be), Stats., does not affect this entitlement. The surviving spouse or surviving domestic partner may not add new dependents to this coverage.

Note: Section 40.02 (25) (b) 3., Stats., defines the surviving spouse or domestic partner of an employee, or retired employee, as an "eligible employee" having, under rules to be promulgated by this department, the same right to health insurance coverage as the deceased employee or retired employee except without any state contribution. Section 40.05 (4) (b) and (be), Stats, concern the accumulated sick leave conversion credit benefit plan. It permits a surviving insured dependent to delay deductions from a deceased employee's accumulated sick leave conversion credits to pay for group health insurance under ch. 40, Stats., because the surviving insured dependent is covered by a health insurance plan or policy comparable to the standard plan during the period deductions are delayed. Health insurance coverage under ch. 40, Stats., is, in effect, suspended unless and until the dependent elects to reinstate coverage and resume the deductions from accumulated sick leave conversion credits.

(b) *Other surviving insured dependents.* The duration of coverage for other surviving insured dependents shall be established by the terms of the group health insurance contract approved by the group insurance board.

(4) PREMIUM PAYMENTS, CANCELLATION OF COVERAGE AND REFUNDS. (a) *Premium payments.* The insurance coverage under this section may be cancelled if premiums are not paid when due. Premiums for insurance coverage under this section shall be paid from the following sources in the following order:

1. Advance premiums payments received from the insured employee by payroll deduction, annuity deduction or direct payment for periods after the end of the month in which the insured employee died, minus any such amounts refunded to the employer.

2. The remaining balance of any converted sick leave credits under s. 40.05 (4) (b) or 40.95, Stats.

3. Deductions under s. 40.08 (2), Stats., from any annuity being paid from the Wisconsin retirement system to the responsible person, unless the annuity is insufficient to pay the monthly premium due.

4. Direct and timely payments by the responsible party.

(b) *Cancellation of coverage.* A responsible person may cancel coverage for which the person is responsible. Such cancellations are effective after the end of the month in which received, unless a different effective date is expressly provided in the group health insurance contract approved by the group insurance board.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; CR 08–079: r. and recr. Register April 2009 No. 640, eff. 5–1–09; EmR0938: emerg. am. (2m) and (3), eff. 1–1–10; CR 10–004: am. (2m) and (3) Register July 2010 No. 655, eff. 8–1–10; **CR 14–055: cr. (1) (b) (title), am. (1) (b), cr. (1) (c) (title), am. (1) (c), (2m), (a), (b) Register May 2015 No. 713, eff. 6–1–15.**

ETF 40.10 Public employers health insurance. **(1)** An employee of an employer, other than the state, shall be eligible for health insurance under s. 40.51 (7), Stats., if requirements of ss. 40.02 (46) and 40.22, Stats., or of s. 40.19 (4) (a), Stats., are satisfied. An employee of an employer that is not a participating employer shall be eligible for health insurance under s. 40.51 (7), Stats., if the requirements set forth in s. 40.02 (28) are satisfied and the following requirements are met:

(a) The employee works at least two–thirds of what is considered full–time employment by the department.

(b) Employment in the employee's position is expected to last at least one year.

(2) As provided in a collective bargaining agreement under subch. IV of ch. 111, the employer, including an employer that is not a participating 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 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 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 on leave of absence or layoff, an employer contribution is optional.

(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), Stats., 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.

(3) Except as provided under sub. (2), the employer shall pay an employer contribution toward the gross health insurance premium based on the average premium of qualified plans in the service area of the employer, as follows:

(a) For insured part–time 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 not specified in par. (a) or (c), an amount between 50% and 88% of the average premium cost of qualified plans.

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

(d) The employer can establish an arrangement for contributing towards the premiums for employee health insurance under s. 40.51 (7), Stats., pursuant to sub. (2) (d) 1. through 4.

(e) The group insurance board, with the advice of the actuary, may classify a health plan offered to local government employees, including local government employees of employers who are not participating employers, in a tier that is different than that of the health plan of the same name as offered to state employees.

History: Cr. Register, December, 1987, No. 384, eff. 1–1–88; CR 04–075: am. (2) (b), cr. (2) (d) and (e) Register November 2004 No. 587, eff. 1–1–05; CR 11–040: am. (2) (intro.), r. (2) (e), cr. (3) (intro.), (a) to (e) Register July 2012 No. 679, eff. 8–1–12; CR 12–054: renum. (1) to (1) (intro.) and am., cr. (1) (a), (b), am. (2) (intro.), (3) (e) Register October 2013 No. 694, eff. 11–1–13.