

Title: Election period tolling for applicants with mental or physical impairment or incapacitation

SEBB Program Administrative Policy 56-2

Contact:	Policy and Rules Coordinator, ERB Division	Effective:	January 1, 2024
Associated RCW:	Ch. 43.06 RCW	Owner:	Policy, Rules, & Compliance Manager, ERB Division
Associated SEB Board Policy Resolutions:		Approved by:	<i>DL 2</i>
Associated WAC:	182-30-080 182-30-090 182-30-100 182-31-080 182-31-090 182-31-100 182-31-130 182-31-150 182-31-190	Position:	Director of the SEBB Program
Assoc. fed law/reg:	26 U.S. Code § 7508A 42 U.S.C. §§ 5121-5207 50 U.S.C. § 1601 et seq 44 C.F.R. Part §206, Subpart B	Date approved:	September 5, 2023
Associated Forms & Communication			

Purpose:

This policy applies whenever an applicant (or another party acting on behalf of the applicant) requests tolling of the continuation coverage, new employee eligibility, regained eligibility, annual open enrollment or special open enrollment election period. Tolling may be requested for reason of mental or physical impairment or incapacitation, when a state of emergency is declared by the Governor of Washington State, as described in chapter 43.06 RCW, or when a federal emergency is declared under 44 C.F.R. Part §206, Subpart B, the Internal Revenue Service (IRS) recognizes the emergency for purposes of delaying deadlines, and the emergency prevents an applicant from making a timely election.

This policy establishes the methodology that the School Employees Benefits Board (SEBB) Program and the Health Care Authority's (HCA) Office of Legal Affairs (OLA) will use to make a determination of mental or physical impairment or incapacitation for the purpose of tolling the election period of continuation coverage, new employee eligibility, regained eligibility, annual open enrollment, or special open enrollment. The policy also establishes the methodology the SEBB Program and OLA will use to make a determination when a state of emergency is declared by the Governor of Washington State, as described in chapter under 43.06 RCW, or when a federal emergency is declared under 44 C.F.R. Part §206, Subpart B, the IRS recognizes the emergency for

purposes of delaying deadlines, and the emergency prevents an applicant from making a timely election.

This policy provides timing requirements to request tolling of the election period for reason of mental or physical impairment or incapacity.

For the purposes of this policy, “tolling” or “tolled” means to pause, delay or suspend the time period to elect continuation coverage, or SEBB insurance coverage in the case of new employee eligibility, regained eligibility, annual open enrollment, or special open enrollment.

Policy:

1. Election Period Tolling Eligibility: The applicant or the applicant’s legal representative, may request tolling of the election period. The legal representative must provide proof of the legal representation.
2. A determination of eligibility for tolling will be made as follows:
 - a. Mental or physical incapacitation that prevents the applicant from making the election:
 - i. A determination of the applicant’s mental or physical impairment or incapacitation shall be made by the applicant’s physician. A written note from the applicant’s physician will be sufficient proof of the applicant’s impairment or incapacitation if it includes the following information:
 1. The condition that renders or rendered the applicant mentally or physically impaired or incapacitated; and
 2. The date that the applicant’s mental or physical impairment or incapacitation began, and if it has ended, the date the period or incapacitation ended. If the applicant’s incapacitation has not yet resolved itself at the time of the request for tolling, the applicant must have legal representation with the capacity to act on behalf of the applicant.
 - ii. If the applicant, or the applicant’s legal representative, is not able to provide a note from the applicant’s physician, then the HCA Clinical Quality and Care Transformation Division (CQCT) will make a determination of the applicant’s impairment or incapacitation based upon supporting documents submitted on behalf of the applicant. The supporting documents must clearly state the condition that renders or rendered the applicant mentally or physically impaired or incapacitated, and the date the impairment or incapacitation began and if the impairment or incapacitation has ended, the date it ended.

Note: When an applicant dies during an election period the applicant’s legal representative may request tolling to allow the legal representative or guardian to make an election on the applicant’s behalf. The legal representative must provide proof they may make elections on the applicant’s behalf.

- b. A state of an emergency is declared by the Governor of Washington State, as described in chapter 43.06 RCW, or a federal emergency is declared under 44 C.F.R. Part §206, Subpart B, the IRS recognizes the emergency for purposes of delaying deadlines, and the emergency prevents an applicant from making a timely election:

- i. A statement from the applicant that they have been impacted by an emergency declared by the Governor of Washington State or due to a federal emergency and supporting documents that show the impact and explain why the applicant could not make an election during the election period.
 - ii. If the emergency caused the applicant to be mentally or physically incapacitated the applicant must meet the tolling requirements in section 2 (a).
3. Requests for election period tolling must be made in writing and received by the SEBB Program no later than 120 days after the date on the denial notice that was issued by HCA or the SEBB organization or from the date of the action that the applicant is now requesting be tolled. A written note from the applicant's physician as described in section 2(a)(i) above, or supporting documentation as described in section 2(a)(ii) or 2(b) must be submitted with the request for tolling of the election period.
4. Upon approval, the election period shall be tolled from the date of the applicant's mental or physical impairment or incapacitation or the date the state of emergency started to impact the applicant provided that if the applicant's incapacitation has not yet resolved itself at the time of the request for tolling, the applicant must have legal representation with the capacity to act on behalf of the applicant. The applicant, their legal representative, or any party acting on behalf of the applicant, will receive the balance of the election period to make the election of continuation coverage or SEBB insurance coverage.

Example: During the 60-day election period, the applicant gets into an accident and becomes hospitalized in a coma on day 25. The applicant fully recovers and is released from the hospital on day 55. On day 75, applicant sends in an application to HCA to enroll in COBRA benefits. Along with the application, they submit a letter from the treating physician stating the applicant's condition and that from day 25 through 55, the applicant was both mentally and physically incapacitated. Because the applicant provided adequate documentation for the incapacitation, the election period timeline will be tolled, granting an additional 30 days (day 55 – day 25 = 30 days), so the application on day 75 is timely, and they would not be considered untimely until day 90.

5. The balance of the tolled election period will begin to run (i.e., the time period to make an election is no longer paused, delayed, or suspended and will begin to run out) on the date that the applicant reestablishes coherence or capability, or the date legal representation is established, as demonstrated by supporting documentation.

Note: If the applicant's legal representative, who is already on file with the HCA, is also mentally or physically impaired or incapacitated, the tolled election period will begin to run on the date the legal representative reestablishes coherence or capability, or the date a new legal representative is established.

6. Documentation of legal representation must be received by the SEBB Program no later than 120 days from the date on the denial that was issued by the HCA.
7. In the case of a party acting on behalf of the applicant, the balance of the tolled election period will start (i.e., the time period to make an election is no longer paused, delayed, or suspended and will begin to run out) on the date the party began acting on behalf of the applicant.
8. Once the election has been made within the balance of the tolled election period (i.e., within the time period remaining after the election period is no longer paused, delayed, or

suspended), coverage will begin retroactive to the date of the qualifying event and is contingent upon payment of any unpaid premiums and unpaid applicable premium surcharges. All retroactive premiums are paid post-tax.

9. If the request for tolling is denied, the applicant or another party acting on behalf of the applicant may appeal the denial to the SEBB Appeals Unit by following the process described in WAC 182-32-2030.