

**Title: Subscriber Mistake – Factor Test**

**PEBB Program Administrative Policy 94-3**

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| <b>Contact:</b>                                  | Policy and Rules Coordinator, ERB Division   | <b>Effective:</b>     | January 1, 2023                                   |
| <b>Associated RCW:</b>                           |  | <b>Owner:</b>         | Policy, Rules, & Compliance Manager, ERB Division |
| <b>Associated PEBB Board Policy Resolutions:</b> |  | <b>Approved by:</b>   | <i>Dd 2 hie</i>                                   |
| <b>Associated WAC:</b>                           |  | <b>Position:</b>      | Director of the PEBB Program                      |
| <b>Assoc. fed law/reg:</b>                       | Section 125 of the Internal Revenue Code   | <b>Date approved:</b> | August 24, 2022                                   |
| <b>Associated Forms &amp; Communication</b>      | State of Washington Salary Reduction Plan PEBB Policy 94-1 Accessing PEBB Program salary reduction plan document |                       |   |

**Purpose:**

This policy applies whenever an employee makes a mistake electing a medical flexible spending arrangement (FSA), a limited purpose FSA, a dependent care assistance program (DCAP), or when a subscriber requests a health plan change when they or their dependent experiences a disruption of medical care because of a mistake, which impacts a documented, on-going course of treatment.

This policy does not apply to a subscriber’s initial enrollment or disenrollment in a PEBB health plan and does not supplement any existing special open enrollment events or add new events not otherwise specified in chapters 182-08 and 182-12 WAC.

**Policy:**

1. The following factors will be used by the PEBB Program to determine if a mistake was made by the subscriber. Each factor must provide clear and convincing evidence:
  - a. **Impossibility** – Is it impossible for the subscriber or their dependent to use the elected benefit?
  - b. **Timeliness of request** - Did the subscriber discover the mistake and appeal within a reasonable period?
  - c. **Triggering event** – If the request was not timely, did a triggering event (i.e., an annual visit to a provider) alert the subscriber they had made a mistake?
  - d. **History** - Does the history of the subscriber’s past elections make the current election seem consistent with their pattern of coverage?
  - e. **Consequence of election** – Would no reasonable person have consciously chosen to make that election in consideration of the consequences?
  - f. **Use of benefit** – Has the subscriber or their dependent been using the mistakenly elected benefits during the plan year?
  - g. **Notice to the subscriber** – Was the subscriber given ample notice of their election and they failed to act on it?
  - h. **Diagnosis and disruption of care** – Will the subscriber or their dependent’s treatment be available based on the election?
2. If the PEBB Program determines that a mistake was made, any necessary changes to the employee’s medical FSA, limited purpose FSA, DCAP, or a subscriber’s health plan coverage will be made retroactively to return the subscriber to the same position they would be in had the mistake not been made.