

## Chapter DHS 138

### SUBSIDY OF HEALTH INSURANCE PREMIUMS FOR PERSONS WITH HIV INFECTION

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**Note:** Chapter HFS 138 was created as an emergency rule effective November 21, 1990. Chapter HFS 138 was renumbered chapter DHS 138 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., [Register January 2009 No. 637](#).

**DHS 138.01 Authority and purpose.** This chapter is promulgated pursuant to ss. [252.16](#) and [252.17](#), Stats., for the purpose of enabling the department to administer a program to subsidize health insurance premium costs for an individual who takes unpaid medical leave or for an individual who is unable to continue his or her employment or must reduce his or her hours because of an illness or medical condition arising from or related to HIV infection.

**History:** Cr. [Register, May, 1991, No. 425](#), eff. 6-1-91; am. [Register, July, 1993, No. 451](#), eff. 8-1-93; corrections made under s. 13.93 (2m) (b) 7., Stats., [Register, August, 1995, No. 476](#); am. [Register, August, 1998, No. 512](#), eff. 9-1-98.

**DHS 138.02 Applicability.** This chapter applies to any individual with HIV infection who is eligible to participate in the subsidy program under this chapter, to the individual's employer, if the individual is currently employed, or former employer, if the individual is no longer employed, to the individual's insurer and to the department.

**History:** Cr. [Register, May, 1991, No. 425](#), eff. 6-1-91.

**DHS 138.03 Definitions.** In this chapter:

(1) "COBRA" means the federal consolidated omnibus budget reconciliation act of 1986, PL [99-272](#).

(2) "Department" means the Wisconsin department of health services.

(3) "Dependent" means a spouse, domestic partner under ch. [770](#), Stats., or an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(4) "Employee" means any of the following:

(a) An active or retired wage, commissioned or salaried earner whose services are or were utilized by the employer who provided health care coverage to the individual by virtue of the individual's employment.

(b) A member of a union, trust or association where the member is entitled to health care coverage by virtue of the individual's membership in the union, trust or association.

(5) "Employer" means a group policyholder subject to s. [632.897](#), Stats., or the sponsor of a group health plan subject to [29 USC 1161](#) to [1168](#) or [42 USC 300bb-1](#) to [300bb-8](#), including a controlled group, partnership or other arrangement under common control, an affiliated service group and employee leasing arrangements.

(6) "Family income" means the gross earnings of an employee and his or her spouse, including wages and salary, net income from non-farm self-employment, net income from farm self-employment, as well as unearned income including social security, dividends, interest income, income from estates or trusts, net rental income or royalties, public assistance, pensions or annuities, unemployment compensation, workers compensation, main-

tenance or alimony, child support, family support and veterans pensions.

(7) "Family size" means the number of individuals in a group of persons related by birth, marriage or adoption who reside together.

(8) "Federal poverty line" means the poverty income threshold by size of family unit for the current calendar year published as part of the poverty income guidelines by the U.S. department of health and human services in the federal register, pursuant to [42 USC 9902\(2\)](#).

(9) "Group health plan" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health care coverage to members of a group whether or not dependents of the members are also covered. The term includes a medicare supplement policy, as defined in s. [600.03 \(28r\)](#), Stats., but does not include a medicare replacement policy, as defined in s. [600.03 \(28p\)](#), Stats., or a long-term care insurance policy, as defined in s. [600.03 \(28g\)](#), Stats.

(10) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(11) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(12) "Individual health policy" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health coverage to an individual on an individual basis and not as a member of a group, whether or not dependents of the individual are also covered. The term includes a medicare supplement policy as defined in s. [600.03 \(28r\)](#), Stats., but does not include a medicare replacement policy, as defined in s. [600.03 \(28p\)](#), Stats., or a long-term care insurance policy, as defined in s. [600.03 \(28g\)](#), Stats.

(13) "Insurer" has the meaning prescribed in s. [600.03 \(27\)](#), Stats.

(14) "Medicare" means coverage under part A, part B, or part D of Title XVIII of the federal Social Security Act, [42 USC 1395](#) to [1395hhh](#).

(15) "Physician" has the meaning prescribed in s. [448.01 \(5\)](#), Stats., namely, an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.

(16) "Residence" means the concurrence of physical presence with intent to remain in a place of fixed habitation, with physical presence being prima facie evidence of intent to remain.

(17) "Subsidy under s. [252.16](#), Stats." means a subsidy to pay all or part of the premium costs of health insurance coverage for a person with HIV infection who because of the HIV infection is unable to continue working or must reduce hours of work.

(18) "Subsidy under s. [252.17](#), Stats." means a subsidy to pay the premium owed for costs of health insurance coverage for a person with HIV infection who because of the HIV infection is on unpaid medical leave from his or her employment.

(19) "Unpaid medical leave" means an unpaid leave from employment for an employee who has a serious health condition, as

defined in s. 103.10 (1) (g), Stats., which makes the employee unable to perform his or her employment duties.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91; cr. (15), Register, July, 1993, No. 451, eff. 8-1-93; r. and recr. Register, August, 1998, No. 512, eff. 9-1-98; correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637; CR 10-084: am. (2), (3), and (14) Register December 2010 No. 660, eff. 1-1-11.

**DHS 138.04 Participation in the health insurance premium subsidy program. (1) ELIGIBILITY.** In order to participate in the health insurance premium subsidy program, a person shall satisfy all of the following requirements which pertain to the type of subsidy the person is seeking:

- (a) Have residence in this state;
- (b) 1. For a subsidy under s. 252.16, Stats., have a family income that does not exceed 300% of the federal poverty line for a family the size of the individual's family;
2. For a subsidy under s. 252.17, Stats., have a family income that does not exceed 300% of the federal poverty line for a family the size of the individual's family;
- (c) Have an HIV infection;
- (d) Have health insurance coverage under a group health plan, an individual health policy or Medicare part D, or is eligible for health insurance coverage under a group health plan, an individual health policy or Medicare part D;
- (e) Is on unpaid medical leave if the person is seeking a subsidy for group health plan premiums while on unpaid medical leave; and
- (f) Does not have escrowed under s. 103.10 (9) (c), Stats., an amount sufficient to pay the individual's required contribution to his or her group health plan premium payments during an unpaid medical leave if the individual is seeking a subsidy for these payments.

**(2) APPLICATION PROCESS.** (a) Any individual who satisfies the eligibility conditions under sub. (1) and wants to participate in the health insurance premium subsidy program shall complete and submit to the department an application form, F-44614, which shall provide the following information:

1. The individual's name and address;
2. Names of the individual's family members and their ages;
3. Family income information;
4. Name and address of the individual's present or immediate past employer through whom the individual has or had health coverage and the name and address of the insurer or administrator of the health plan under which the individual is or was covered;
5. Authorization, in writing, for the department to do all of the following:
  - a. Contact the individual's employer or former employer or health insurer to verify the individual's employment status, the individual's eligibility for health insurance coverage and the premium and any other conditions of coverage, to make premium payments and for other purposes related to the administration of this chapter; and
  - b. Make any necessary disclosure to the individual's employer or former employer or health insurer regarding the individual's HIV status;
  6. Written certification from a physician of the following:
    - a. That the individual has an HIV infection; and
    - b. That the individual is on an unpaid medical leave because of an illness or medical condition arising from or related to the individual's HIV infection or because of medical treatment or supervision of the illness or condition or that the individual's employment has been terminated or his or her hours have been reduced because of an illness or medical condition arising from or related to the individual's HIV infection; and
  7. Any other information that the department requires for purposes of determining eligibility under sub. (1) or evaluating the health insurance premium subsidy program.

**Note:** To obtain a copy of F-44614, write or phone the Wisconsin Division of Public Health, AIDS/HIV Program, P.O. Box 2659, Madison, WI 53701-2659, (608) 267-5287. The completed form should be returned to the same office.

(b) Any individual who does not satisfy sub. (1) (b), (d) or (e), may submit an application form, F-44614, that the department will hold until the individual satisfies all the applicable requirements under sub. (1). The department may not contact the individual's employer, former employer or health insurer until the individual satisfies all the applicable requirements under sub. (1) unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure regarding the individual's HIV infection.

**(3) NOTIFICATION OF DECISION.** Within 20 working days after receipt by the department of the information described under sub. (2), the department shall determine whether or not the applicant satisfies the conditions under sub. (1) and do one of the following:

- (a) If the applicant satisfies all the applicable requirements under sub. (1), the department shall approve the application and notify the applicant in writing; or
- (b) If the applicant does not satisfy an applicable requirement under sub. (1), the department shall deny the application and notify the applicant, in writing, of the reasons for denial and of the right under sub. (5) to appeal the denial. If the denial is based upon inability to satisfy one or more of the requirements under sub. (1) (b), (d) or (e), the department shall include in the notice information that the department will hold the application until the applicant submits to the department written documentation that the requirement or requirements not met have been met, without need of the applicant to reapply.

**(4) RIGHT TO REAPPLY.** If the reasons listed by the department under sub. (3) (b) for denial change, an applicant may reapply.

**(5) RIGHT TO APPEAL.** In the event that the department denies an application, the applicant may request a hearing under ch. 227, Stats. The request for a hearing shall be submitted, in writing, to the department of administration's division of hearings and appeals and received by that office no later than 20 calendar days after the date of the letter of denial under sub. (3) (b).

**Note:** The mailing address of the Division of Hearings and Appeals is P. O. Box 7875, Madison, WI 53707.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91; am. (1) (intro.), (d) to (f) 1., (2) (a) (intro.), 5. a. and b., 6. b., 7., (b), (3) (a) and (b), r. and recr. (1) (i), Register, July, 1993, No. 451, eff. 8-1-93; r. and recr. (1) (b) and (d), am. (1) (e), (2) (a) 4., 5. a., b and (b) and (5), r. (1) (f) to (h), and renun. (1) (i) to be (1) (f), Register, August, 1998, No. 512, eff. 9-1-98; CR 10-084: am. (1) (b) 2., (d), and (2) (a) (intro.) and (b) Register December 2010 No. 660, eff. 1-1-11.

**DHS 138.05 Payment of health insurance premiums. (1) AMOUNT AND PERIOD OF SUBSIDY.** (a) Except as provided in pars. (e), (f), (g), and (h), if an individual satisfies s. DHS 138.04 (1) and has been notified by the department under s. DHS 138.04 (3) (a) that the application has been approved, the department shall take one of the following actions, as appropriate, on or after the date of the notice of decision under s. DHS 138.04 (3) (a):

1. For a subsidy under s. 252.17, Stats., the department shall pay the full amount of the premium due for coverage under a group health plan during an unpaid medical leave for an individual whose family income does not exceed 200% of the federal poverty line.
2. For a subsidy under s. 252.16, Stats., the department shall pay the full amount of the premium due for health insurance coverage for an individual whose family income does not exceed 200% of the federal poverty line.
3. For a subsidy under s. 252.16, Stats., the department shall pay the full amount of the premium, subject to an annual premium contribution assessment under par. (d), due for health insurance coverage for an individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line.
4. For a subsidy under s. 252.17, Stats., the department shall pay the full amount of the premium, subject to a premium contribution assessment under par. (dm), due for health insurance

coverage during an unpaid medical leave for an individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line.

(b) The department may not refuse to pay a premium because the health plan coverage that is available to the individual who satisfies s. [DHS 138.04 \(1\)](#) includes coverage of the individual's spouse or domestic partner under ch. 770, Stats., and dependents.

(c) Except as provided in par. (e), the department shall terminate payments when:

1. The individual's unpaid medical leave ceases;
2. The individual no longer satisfies s. [DHS 138.04 \(1\)](#); or
3. Upon the expiration or termination of the individual's health insurance coverage.

(d) Upon approval of an application for a subsidy under s. [252.16](#), Stats., the department shall annually assess a premium contribution to be paid by eligible individuals whose family income exceeds 200% but does not exceed 300% of the federal poverty line. The amount of the contribution shall equal 3% of the annual policy premium. The annual policy premium shall be determined by annualizing the first monthly premium that is due for the benefit year.

(dm) Upon approval of an application for a subsidy under s. [252.17](#), Stats., the department shall assess a premium contribution to be paid by an eligible individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line. The amount of the contribution shall equal 3% of the annual policy premium prorated for the number of months that the individual is on an unpaid medical leave. The annual policy premium shall be

determined by annualizing the first monthly premium that is due for the benefit year.

(e) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation account under s. [20.435 \(1\) \(am\)](#), Stats.

(f) For COBRA continuation coverage policies, the amount paid under par. (a) may not exceed the applicable premium as defined in [29 USC 1164](#) or [42 USC 300bb-4](#), as amended to April 7, 1986.

(g) For non-COBRA policies, the amount paid under par. (a) may not exceed the amount of the premium of the most cost-effective policy available to the individual.

(h) If an individual who satisfies s. [DHS 138.04 \(1\)](#) has an amount escrowed under s. [103.10 \(9\) \(c\)](#), Stats., that is not sufficient to pay the required contribution to his or her premium payments while on unpaid medical leave, the amount paid under par. (a) may not exceed the individual's required contribution for the duration of the unpaid medical leave minus the amount escrowed.

**(2) PAYMENT OF PREMIUMS.** The department shall make payment of premiums allowed under sub. (1) to the insurer, the administrator of an employer self-funded plan or the employer that provides health insurance coverage, or to the covered individual when the individual, in order to meet a premium due date, makes a payment directly to the insurer or employer and provides the department with proof that the payment was made.

**History:** Cr. [Register, May, 1991, No. 425](#), eff. 6-1-91; am. (1) (a), (b), (c) 1., 3. and (2), cr. (1) (g), [Register, July, 1993, No. 451](#), eff. 8-1-93; am. (1) (a) to (c), (e), (f) and (2), r. and recr. (1) (d), renum. (1) (g) to be (h) and cr. (1) (g), [Register, August, 1998, No. 512](#), eff. 9-1-98; correction in (1) (e) made under s. [13.92 \(4\) \(b\) 7.](#), Stats.; [CR 10-084](#); am. (1) (a) 1. and 2., (b), and (e), cr. (1) (a) 4. and (dm) [Register December 2010 No. 660](#), eff. 1-1-11.