

**KITSAP COUNTY
LEOFF 1 DISABILITY BOARD
M I N U T E S**

**February 9, 2022 2:00 – 2:30 pm
Zoom Meeting**

Present - Commissioner Wolfe, Don Lutes, Ed Boucher & Sally Lynch.

Purpose – LEOFF 1 member requesting exception from Board to reimburse costs for dental procedure

Member is requesting the LEOFF 1 Board authorize reimbursement for dental costs their agency of hire denied. Member challenged the language believing any dental procedure should be considered eligible and fall under wellness.

Commissioner Wolfe requested Lael Carlson, DPA provide a legal opinion regarding the relationship between RCW 41.26.030(20) and the request by LEOFF 1 member for specific dental coverage.

The Board requested a follow up meeting once legal opinion is received.

2/16/22 - Lael Carlson, DPA response to the Board –

You have asked for a legal opinion regarding the relationship between RCW 41.26.030(20) and a request by a LEOFF 1 member for additional dental coverage.

Background - The Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (the Act), chapter 46.21 RCW, establishes a retirement system for fire fighters and law enforcement officers and was divided into two separate benefit plans in 1977. At issue here is the LEOFF 1 plan, which applies to members employed before October 1, 1977. The Act authorized the establishment of disability boards to administer the LEOFF system. RCW 41.26.110. The Board is comprised of both employer and employee representatives. RCW 41.26.110(1)(a).

The Board is to "perform all functions, exercise all powers, and make all such determinations as specified in this chapter." RCW 41.26.110(3). Additionally, the Board "shall designate the medical services available to any sick or disabled member." RCW 41.26.150(1)(b).

Dental coverage - RCW 41.26.030(20) states that "Medical services" for plan 1 members "shall include the following as minimum services to be provided..." and, as relates to dental, "Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident." RCW 41.26.030(20)(iii)(H).

The Kitsap County LEOFF 1 Disability Board's current Rules, Policies, and Procedures states that "[t]he Board believes that good dental health is essential in maintaining good overall health. In addition to the requirements outlined in RCW 41.26.030(20)(b)(iii)(H) the Board authorizes payment for dental care as follows: Wellness examinations including x-rays; Services provided by a dental hygienist; Payment for medication prescribed by a licensed dentist. Dental coverage is capped at a maximum of \$1,000.00 per calendar year." Section 4.2.

Amending current Rules, Policies, and Procedures - Case law is clear that a Board has discretion to approve reimbursement for preventive dental services, which are not enumerated by statute under the Act. In *Snohomish Cnty. Fire Dist. No. 1 v. Snohomish Cnty.*, 128 Wn. App. 418, 426, 115 P.3d 1057 (2005), the Court held that the Board did not abuse its discretion in determining that annual dental examinations and cleanings are medically necessary within the meaning of the statute. See also *Stegmeier v. City of Everett*, 21 Wn. App. 290, 294, 584 P.2d 488 (1978) (approving preventative services is within the Board's discretion, provided the services are medically necessary as opposed to merely cosmetic).

Because the Board has discretion to pay for more than the minimum services outlined in the statute, we see no reason why the current Rules, Policies, and Procedures could not be amended as suggested below.

LEOFF 1 Medical Claims - Justification for Payment - The agency having jurisdiction is required to pay reasonable fees for medical services in accordance with RCW 41.26.150 (1) which states, "the employer shall pay the necessary medical services not payable from some other source as provided for in subsection (2). RCW 41.26.150 (2) requires that any medical services payable must be reduced by any amount received or eligible to be received by the Member. (i.e. from other parties, additional insurance benefits, social security and worker compensation) prior to payment by the agency having jurisdiction. No other source has been identified.

Review of other LEOFF 1 Board policies

Jerry Childs, City of Port Orchard representative provided other LEOFF 1 jurisdictions dental coverage policies for comparison. Jerry provided the City of Bremerton, Pierce County, Whatcom County, Bothell, City of Seattle, Mount Vernon, Olympia and Richland.

Follow up meeting scheduled <https://www.kitsapgov.com/das/Pages/LEOFF-1-Disability-Board.aspx>