



BRIAN SANDOVAL  
Governor

DAMON HAYCOCK  
Executive Officer

STATE OF NEVADA  
**PUBLIC EMPLOYEES' BENEFITS PROGRAM**

901 S. Stewart Street, Suite 1001  
Carson City, Nevada 89701  
Telephone (775) 684-7000 • (800) 326-5496  
Fax (775) 684-7028  
[www.pebp.state.nv.us](http://www.pebp.state.nv.us)



PATRICK CATES  
Board Chairman

**NOTICE OF INTENT TO ACT UPON  
A PROPOSED PERMANENT REGULATION R054-17**

Notice of Hearing for the Adoption, Amendment and Repeal of a Regulation  
of the Public Employees' Benefits Program

The Board of the Public Employees' Benefits Program will hold a public hearing no earlier than 8:30 am on the 30<sup>th</sup> day of November 2017, at the Richard H. Bryan Building, 901 South Stewart Street, Suite #1002, Carson City, Nevada 89701 and video-conferenced to Nevada State Business Center, 3300 West Sahara Avenue, Tahoe Room Suite #430, Las Vegas, Nevada 89102. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment and repeal of regulations that pertain to Chapter 287 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation.  
***The PEBP Board's subrogation efforts are governed by NRS 287.043 and NRS 287.0465. These statutes do not detail the differences between 1<sup>st</sup> party and 3<sup>rd</sup> party subrogation efforts. The proposed regulation seeks to further define and emplace a process for subrogation to any and all tort, contractual or other liability for the cost of a member's medical services that are payable by the PEBP Board's plan of self-insurance.***
2. Either the terms or the substance of the regulations to be adopted, amended and repealed or a description of the subjects and issues involved.  
***See attached proposed regulation.***
3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:
  - (a) Both adverse and beneficial effects; and  
***Adverse effects: None.***  
***Beneficial effects: None.***
  - (b) Both immediate and long term effects:  
***None.***
4. The estimated cost to the agency for enforcement of the proposed regulation.  
***None.***

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

***Not Applicable.***

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

***Not Applicable.***

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

***Not Applicable.***

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

***Not Applicable.***

Persons wishing to comment upon the proposed action of Public Employees' Benefits Program Board may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Public Employees' Benefits Program, Attention: Kari Pedroza, 901 South Stewart Street, Suite 1001, Carson City, Nevada 89701. Written submissions must be received by the Public Employees' Benefits Program on or before Wednesday, November 29, 2017. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Public Employees' Benefits Program may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted, amended and repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted, amended and repealed will be available at the Public Employees' Benefits Program, 901 South Stewart Street, Suite 1001, Carson City, Nevada, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. This information is also available at Public Employees' Benefits Program's web site at <http://www.pebp.state.nv.us>.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations: The Nevada State Library and Archives, 100 North Stewart Street, Carson City, Nevada; The Legislative Building, 401 South Carson Street, Carson City, Nevada; The Blasdel Building, 209 East Musser Street, Carson City, Nevada; The Public Employees' Benefits Program, 901 South Stewart Street, Suite 1001, Carson City, Nevada; and The Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada. In addition, the notice was mailed to all State agencies and to groups and individuals as requested. In addition, this notice has been posted on <https://www.leg.state.nv.us/App/Notice/A/> and <https://pebp.state.nv.us/meetings-events/board-meetings/> and <https://nv.notice.gov>

Date: September 29, 2017

**REVISED PROPOSED REGULATION OF THE  
BOARD OF THE PUBLIC EMPLOYEES' BENEFITS PROGRAM**

**LCB File No. R054-17**

September 12, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 287.0424, 287.043 and 287.0465.

A REGULATION relating to public employees; providing, under certain circumstances, for the Executive Officer employed by the Board of the Public Employees' Benefits Program to be subrogated to the rights of certain public officers or employees against certain persons; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that if a member incurs medical costs that are payable under the plan of self-insurance established by the Board of the Public Employees' Benefits Program, but for which a person, other than the member, has the legal liability to pay, the Board is subrogated to the rights of the member and may commence, join or intervene in any legal action against the person to enforce that legal liability. The term "member" is defined for the purposes of this provision to mean an active or retired officer or employee of the State or a local governmental agency or a dependent of such an officer or employee who is covered under the Public Employees' Benefits Program. (NRS 287.0465) Existing law authorizes the Board to delegate to the Executive Officer employed by the Board the exercise or discharge of any power, duty or function vested in or imposed upon the Board. (NRS 287.0424)

**Section 1** of this regulation: (1) provides that the rights of a member to which the Board is authorized to be subrogated pursuant to existing law include the legal liability of an insurer providing first-party coverage to a member; (2) delegates to the Executive Officer the powers of the Board to be subrogated to the rights of a member against certain persons; (3) requires, with limited exceptions, the Executive Officer to apply any money collected from the proceeds of a recovery from an insurer providing first-party coverage to a member to defray the out-of-pocket medical expenses of a member before applying such money to the cost of medical services of the member; (4) authorizes, under certain circumstances, the Executive Officer to collect less than the total cost of the medical services to which the Board is entitled to be subrogated pursuant to

existing law; and (5) provides that a decision of the Executive Officer made pursuant to **section 1** is final and not subject to judicial review.

**Section 2** of this regulation: (1) authorizes the Executive Officer to apply the provisions of **section 1** concerning his or her power to be subrogated to the rights of a member with regard to the legal liability of an insurer providing first-party coverage to the member to medical expenses incurred before the effective date of this regulation; and (2) provides that such a decision by the Executive Officer is final and not subject to judicial review.

**Section 1.** Chapter 287 of NAC is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in subsections 3 and 4, the Board, pursuant to chapter 287 of NRS, including, without limitation, NRS 287.0465, is entitled to be subrogated to the rights of a member with regard to any and all tort, contractual or other legal liability on the part of a person other than the member, including, without limitation, the legal liability of an insurer providing first-party coverage to a member for the cost of medical services of the member that are payable under the plan of self-insurance established by the Board.*

*2. The Board delegates to the Executive Officer its powers to subrogate to the rights of a member as described in subsection 1, subject to provisions of such plan documents for the plan of self-insurance as may be approved by the Board. The Executive Officer shall:*

*(a) Exercise the powers to subrogate to the rights of a member as described in subsection 1 in a manner that is consistent with the plan documents for the plan of self-insurance and any applicable provisions of NRS and NAC; and*

*(b) In accordance with subsection 3, apply any money collected from the proceeds of a recovery from an insurer providing first-party coverage to a member to defray the out-of-*

*pocket medical expenses of the member before applying such money to the cost of medical services of the member that are payable under the plan of self-insurance.*

*3. Except as otherwise provided in subsection 5, a subrogation lien of the Executive Officer upon the proceeds of any recovery from an insurer providing first-party coverage to a member must be reduced by the applicable in-network or out-of-network out-of-pocket maximum balance of the member remaining at the time of the incident giving rise to the subrogation lien. If the subrogation lien includes medical claims from medical costs resulting from the incident giving rise to the subrogation lien which occurred over multiple plan years, the out-of-pocket maximum balances for each plan year must be used for purposes of reducing the subrogation lien amount.*

*4. The Executive Officer may collect less than the total cost of the medical services to which the Board is entitled to be subrogated pursuant to chapter 287 of NRS, including, without limitation, NRS 287.0465, if the Executive Officer negotiated the amount to be collected in good faith with the member, the legal counsel of the member or the insurance carrier of the member or the insurance carrier of a third party.*

*5. The provisions of subsection 3 do not apply to the coordination of benefits for coverage of the cost of medical services which may be provided under:*

- (a) The plan of self-insurance established by the Board; and*
- (b) Any other health insurance coverage.*

*6. A decision of the Executive Officer made pursuant to this section is final and not subject to judicial review.*

*7. As used in this section, “member” has the meaning ascribed to it in NRS 287.0465.*

**Sec. 2.** 1. The Executive Officer may apply the provisions set forth in section 1 of this regulation concerning his or her power to be subrogated to the rights of a member with regard to the legal liability of an insurer providing first-party coverage to the member to medical expenses incurred before the effective date of this regulation.

2. A decision of the Executive Officer made pursuant to subsection 1 is final and not subject to judicial review.

3. As used in this section, “member” has the meaning ascribed to it in NRS 287.0465.