

**ADOPTED REGULATION OF THE BOARD OF
THE PUBLIC EMPLOYEES' BENEFITS PROGRAM**

LCB File No. R089-05

Effective June 28, 2006

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

AUTHORITY: §§1-15, 21-24, 26, 27 and 39-41, NRS 287.043; §§16-18, NRS 233B.120 and 287.043; §19, NRS 233B.100 and 287.043; §§20 and 29-32, NRS 287.043 and 287.0479; §25, NRS 287.043 and 287.045; §28, NRS 287.043 and 287.0439; §§33, 34 and 36, NRS 287.043 and 287.046; §35, NRS 287.043, 287.0439 and 287.0445; §§37 and 38, NRS 287.043, 287.045 and 287.0467.

A REGULATION relating to programs for public employees; making various changes to the provisions that relate to the Public Employees' Benefits Program and the Board of the Public Employees' Benefits Program; and providing other matters properly relating thereto.

Section 1. Chapter 287 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this regulation.

Sec. 2. *“Biennial employee” means an employee whose position of employment is only authorized for 4 to 6 months every other year and who plans to return to the same or a similar position for the next period during which such a position is authorized.*

Sec. 3. *“Tier of coverage” means the category of rates and premiums or contributions for coverage that correspond to:*

- 1. An eligible participant only; or*
- 2. An eligible participant and one or more eligible dependents.*

Sec. 4. 1. *The Chairman shall preside over the meetings of the Board.*

2. Unless the Chairman is required to abstain from voting or is otherwise disqualified from participating in a matter before the Board:

(a) If the Chairman does not vote on the matter, it will be presumed that the Chairman voted with the prevailing majority of members of the Board who voted on the matter.

(b) The Chairman shall vote in the case of a tie.

Sec. 5. 1. At the first meeting of each plan year, the Board will elect from its members a Vice Chairman.

2. The Vice Chairman shall serve as the Chairman in the absence of the Chairman.

Sec. 6. 1. All action by the Board must be approved by a majority of the members of the Board who are present at the meeting. A tie vote constitutes a rejection of the question or matter before the Board.

2. Any motion made by a member of the Board requires a second to the motion for consideration of the motion by the Board.

3. Robert's Rules of Order govern the general conduct of meetings of the Board.

Sec. 7. 1. The Chairman shall determine the agenda of a meeting of the Board.

2. Any member of the Board may submit to the Executive Officer, or in his absence, the Operations Officer of the Program appointed pursuant to NRS 287.0426, a request for a matter to be placed on the agenda of a meeting of the Board.

Sec. 8. 1. The minutes of each meeting of the Board must be distributed to each member of the Board.

2. If the Board causes a meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS, the Board will, pursuant to NRS 287.0415, post a transcript of the meeting on its Internet website not later than 30 days after the meeting. The transcript

will remain posted on the Internet website of the Board for at least 6 months after posting. During the period in which the transcript of the meeting is posted on the Internet website of the Board, a person may request a hard copy of the transcript. The Board may charge the person a fee for the transcript that does not exceed the actual cost to the Board to provide the copy of the transcript.

Sec. 9. *The Executive Officer or his designee shall make all final determinations concerning eligibility:*

- 1. To become a participant in the Program pursuant to NRS 287.045.*
- 2. As a dependent pursuant to NAC 287.312.*

Sec. 10. *Enrollment forms that are submitted to the Program must include, without limitation:*

- 1. The name, address and social security number, if any, of the person who is enrolling in the Program; and*
- 2. The name, address and social security number, if any, of any dependent that the person chooses to cover under the Program.*

Sec. 11. *A participant or dependent shall notify the Program within 30 days after a change of address of the participant or dependent.*

Sec. 12. *The Program shall notify:*

- 1. Representatives of participating public agencies of the procedures and forms relating to participation in the Program through classes offered by the Program.*
- 2. Participants of the procedures and forms relating to participation in the Program through the orientation program required pursuant to NAC 287.314, the written materials sent*

to the participants during the period of open enrollment and any orientation program offered to or written materials sent to retired officers or employees.

3. Employees of the Program of all procedures and forms relating to the internal management of the Program by posting such procedures and forms on the Intranet site of the Program. If any procedure or form relating to the internal management of the Program is amended, all employees of the Program will be notified of such amendment in writing or by electronic mail.

Sec. 13. *1. Except as otherwise provided in subsection 2, if a person who participates in the Program as a retired officer or employee returns to full-time employment with a participating public agency, the person is eligible to participate in the Program as an active officer or employee on the effective date of his reemployment if that day is on the first day of the month or, if the effective date of reemployment is not on the first day of the month, on the first day of the month following the effective date of his reemployment, as appropriate.*

2. If a person who participates in the Program as a retired justice or judge accepts reemployment as a justice of the Supreme Court or district judge pursuant to NRS 1A.370, or if the person returns to full-time employment with a participating public agency to fill a position which has been designated as a position for which there is a critical labor shortage pursuant to NRS 286.523, the person is eligible to participate in the Program as an active justice, judge, officer or employee, as applicable, on the first day of the month immediately following 90 days of full-time employment.

Sec. 14. *A person shall be deemed to have received any notice required pursuant to this chapter or chapter 287 of NRS 5 days after the notice is mailed, by first-class mail, to that person at his last known address, unless the Executive Officer or his authorized designee*

waives this provision because of extenuating circumstances that are sufficient to justify the waiver.

Sec. 15. *Any form, application, claim or other document or information that is required to be submitted to the Program, Executive Officer or Board on or before a specific date will be considered late if the form, application, claim or other document or information is not:*

- 1. Received by the Program, Executive Director or Board, as applicable, before 5 p.m. on that date; or*
- 2. Postmarked on or before that date.*

Sec. 16. *1. Except as otherwise provided in subsection 3, a person may request that the Executive Officer issue an advisory opinion concerning the applicability of any provision of NRS 287.0402 to 287.049, inclusive, that pertains to the jurisdiction of the Board or any regulation adopted by the Board pursuant thereto. Any request for an advisory opinion concerning the applicability of any provision of NRS 287.0402 to 287.049, inclusive, that pertains to the jurisdiction of a public agency or public officer other than the Board or any regulation adopted by the public agency or public officer must be submitted to that public agency or public officer.*

2. A request for an advisory opinion pursuant to subsection 1 must be in writing and set forth:

- (a) The name and address of the person requesting the advisory opinion;*
- (b) A clear and concise statement of the specific question for which the advisory opinion is being sought; and*
- (c) A statement of the facts that support the advisory opinion being sought.*

3. *A person may not request an advisory opinion concerning a question or matter that is an issue in a review or an appeal of a claim or in a pending administrative, civil or criminal proceeding in which the person is a party or otherwise involved.*

4. *The Executive Officer shall review a request for an advisory opinion and issue a response within 30 days after receiving the request.*

5. *An advisory opinion issued by the Executive Officer must be limited to the facts and circumstances set forth in the request.*

6. *An advisory opinion issued by the Executive Officer is appealable to the Board in the same manner as any other appealable decision.*

Sec. 17. *The Executive Officer shall not render an oral advisory opinion to a request for an advisory opinion. A response by electronic mail or an oral response, including, without limitation, a response given over the telephone, to a request for an advisory opinion that is given by the Executive Officer, a member of the Board or staff of the Board are not decisions or official advisory opinions pursuant to this section.*

Sec. 18. *1. Except as otherwise provided in subsection 3, a person may file a petition with the Executive Officer requesting that the Board issue a declaratory order concerning the applicability of any provision of NRS 287.0402 to 287.049, inclusive, that pertains to the jurisdiction of the Board or any regulation adopted by the Board pursuant thereto. Any petition for a declaratory order that concerning the jurisdiction of a public agency or public officer other than the Board or any regulation adopted by the public agency or public officer must be submitted to that public agency or public officer.*

2. A petition for a declaratory order filed pursuant to subsection 1 must include, without limitation:

- (a) The name and address of the petitioner;*
- (b) The reason for requesting the declaratory order;*
- (c) A statement of the facts that support the petition for a declaratory order; and*
- (d) A clear and concise statement of the question or matter to be decided by the Board.*

3. A person may not file a petition for a declaratory order concerning a question or matter that is an issue in a review or an appeal of a claim or in a pending administrative, civil or criminal proceeding in which the person is a party or otherwise involved.

4. The Executive Officer shall notify the Chairman of the petition for a declaratory order not later than 10 days after the petition is received by the Executive Officer.

5. The Board may:

(a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and may enter reasonable orders that govern the conduct of the hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.

(d) Consider relevant actions that have been issued by the Board or any other entity which apply or interpret the statute or regulation in question.

(e) Consider any other information that the Board determines is relevant to the question or matter to be decided by the Board.

6. The Board will notify the petitioner in writing within 10 days after any action taken by the Board concerning the petition.

Sec. 19. 1. *Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation that the Board is authorized to adopt, file, amend or repeal must file a petition with the Executive Officer.*

2. A petition for the adoption, filing, amendment or repeal of a regulation must include without limitation:

(a) The name and address of the petitioner;

(b) A clear and concise statement, including, if applicable, the proposed language, of the regulation to be adopted, filed, amended or repealed;

(c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The Executive Officer may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not contain the information required by subsection 2.

4. The Executive Officer shall notify the petitioner in writing of his decision with regard to the petition within 30 days after the petition is filed.

Sec. 20. 1. *A group whose request for reconsideration with the Board has been denied pursuant to NAC 287.367 may file an appeal with the Hearings Division of the Department of Administration.*

2. On the same date on which a group files an appeal with the Hearings Division pursuant to subsection 1, the group must provide a copy of the appeal to the Executive Officer. Within 30 days after the Executive Officer receives a copy of the appeal, the Executive Officer shall transmit to the Hearings Division a copy of:

(a) The decision of the Board to deny the application of a group to leave the Program that was prepared pursuant to NAC 287.365; and

(b) The record from the hearing conducted pursuant to NAC 287.367.

3. A hearing officer of the Hearings Division shall review the decision of the Board.

Review of the decision of the Board is confined to the information provided to the Hearings Division pursuant to subsection 2, except that in cases concerning alleged irregularities in procedure before the Board that are not shown in the decision or the record, the hearing officer may receive evidence concerning the irregularities.

4. The burden of proof is on the group to show that the decision of the Board to deny the application of the group is invalid pursuant to subsection 6.

5. The hearing officer shall not substitute his judgment for that of the Board as to any criteria, data, information or report on which the Board relied to make its decision to:

(a) Deny the application of the group to leave the Program; or

(b) Deny the request for reconsideration of the application of the group to leave the Program.

6. The hearing officer may remand or affirm the decision of the Board to deny the application of the group to leave the Program or set it aside in whole or in part if the decision of the Board is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the Board;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence in the information provided to the Hearings Division pursuant to subsection 2; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

7. The decision of the hearing officer made pursuant to subsection 6 is final and not subject to judicial review.

Sec. 21. NAC 287.005 is hereby amended to read as follows:

287.005 As used in NAC 287.005 to 287.690, inclusive, *and sections 2 to 20, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 287.006 to 287.145, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 22. NAC 287.011 is hereby amended to read as follows:

287.011 “Certifying agency” means:

1. Except as otherwise provided in subsection 2, for officers and employees of the State and local governmental agencies, the Public Employees’ Retirement System.

2. For members of the professional staff of the ~~University and Community College System of Nevada,~~ *Nevada System of Higher Education*, a retirement program for professional employees offered by or through the ~~University and Community College System of Nevada.~~ *Nevada System of Higher Education.*

Sec. 23. NAC 287.095 is hereby amended to read as follows:

287.095 “Participant” includes the following persons who are eligible to participate in the Program:

1. An officer or employee of a participating public agency;
2. A retired officer or employee;

3. A dependent of such an officer or employee or retired officer or employee;
 4. A survivor of a deceased officer or employee of a public employer if the deceased officer or employee had 10 years or more of service credit, as determined by the appropriate certifying agency, and is deemed to be retired pursuant to NRS 286.676;
 5. A survivor of a deceased retired officer or employee;
 6. A surviving spouse of a police officer, firefighter or official member of a volunteer fire department who was killed in the line of duty;
 7. A surviving child of a police officer, firefighter or official member of a volunteer fire department who was killed in the line of duty;
 8. A ~~state employee participating in a biennial plan that lasts not less than 4 months or more than 6 months~~ *biennial employee* who plans to return to the same or similar position in the next authorized biennial employment period if the ~~state~~ *biennial* employee has timely enrolled, reenrolled, opted to continue coverage or insurance, or opted to join the Program pursuant to this chapter and chapter 287 of NRS in any applicable group coverage or insurance offered by, through or in cooperation with the Program;
 9. A former member of the board of trustees of a school district pursuant to NRS 287.024;
- and
10. A Legislator ~~[-]~~ *whose term of office has not expired.*

Sec. 24. NAC 287.135 is hereby amended to read as follows:

287.135 “Retired officer or employee” means:

1. An officer or employee of a public employer who has met the requirements to receive, and is receiving any distribution of, benefits from:
 - (a) The Judges’ Retirement System;

(b) The Public Employees' Retirement System (PERS);

(c) The Legislators' Retirement System; or

(d) A long-term disability plan of the public employer.

2. An officer or employee of a public employer who:

(a) Has met the requirements to receive, and is receiving any distribution of, benefits from a retirement program for professional employees offered by or through the ~~University and Community College System of Nevada,~~ *Nevada System of Higher Education*, including, without limitation, a retirement plan alternative provided pursuant to NRS 286.802, a tax sheltered annuity or a deferred compensation plan; and

(b) Has participated in the retirement program described in paragraph (a) for at least 5 years as a full-time employee or the equivalent of a full-time employee.

Sec. 25. NAC 287.150 is hereby amended to read as follows:

287.150 1. As used in NRS 287.045, the Board interprets "full-time employment" to mean the employment, election or appointment by a participating public agency of a person who:

(a) In any calendar month, works as a public employee or officer at least 80 hours. The Board will consider such full-time employment to commence at the beginning of the month in which the public employee or officer works 80 hours.

(b) Is elected or appointed as a public officer who receives any compensation regardless of the number of hours worked, or is a member of the board of trustees of a school district who is not an employee but receives any compensation for public service from a local governmental agency. The Board will consider such full-time employment to commence at the beginning of the month in which his term of service or term of office begins.

(c) Is a ~~[state employee participating in the biennial plan in accordance with]~~ *biennial employee pursuant to* NAC 287.500. The Board will consider such full-time employment to commence at the beginning of the month immediately following the date of his employment, and at reemployment and reenrollment in the Program at each successive authorized biennial employment period.

2. Regardless of receipt of retirement distributions as set forth in NAC 287.530, the Board may consider any professional staff employed by the University of Nevada, Reno, or the University of Nevada, Las Vegas, to teach a course of study or training pursuant to chapter 261, Statutes of Nevada 1999, or any continuation by the Legislature of that teaching program beyond July 1, 2001, to whom the University will provide a subsidy, as a state employee participant rather than a retired officer or employee pursuant to NRS 287.023, until the voluntary or involuntary termination of the employee from the teaching program.

Sec. 26. NAC 287.312 is hereby amended to read as follows:

287.312 1. Except as otherwise provided in this section, an eligible officer, employee or retired officer or employee who desires to participate in the Program with one or more dependents in a family unit must declare the existence of a qualifying program coverage unit by executing a declaration of enrollment, under penalty of perjury and subject to the provisions of NRS 686A.290 and 686A.291.

2. The following eligible dependents must be declared, including names ~~[, addresses and social security numbers,]~~ *and addresses*, by the declarant in a declaration of enrollment of a program coverage unit:

(a) A spouse of the declarant.

(b) Any unmarried child of the declarant who is under the age of 19 years.

(c) Any unmarried child of the declarant who is 19 years of age or older if:

(1) At the age of 19 years, the child is incapable of self-support because of a physical or mental disability; and

(2) The declarant provides supporting evidence to the Program within 30 days after the 19th birthday of the child that demonstrates that the child qualifies for coverage and insurance pursuant to this paragraph.

(d) Any unmarried child of the declarant who is 19 years of age or older but less than 24 years of age, if the child is enrolled in a program of secondary education or an independently accredited program of postsecondary education, including, without limitation, a college, university, community or junior college, graduate school and accredited trade or business school, on a full-time basis.

(e) Any unmarried child of the declarant who is 24 years of age or older, if:

(1) The child was enrolled in a program of secondary education or an independently accredited program of postsecondary education, including, without limitation, a college, university, community or junior college, graduate school and accredited trade or business school, on a full-time basis between his 19th birthday and his 24th birthday;

(2) At the age of 24 years, the child is incapable of self-support because of a physical or mental disability if the disability occurred while the child was a full-time student; and

(3) The declarant provides supporting evidence to the Program within 30 days after the 24th birthday of the child that demonstrates that the child qualifies for coverage and insurance pursuant to this paragraph.

3. All declared members of a program coverage unit must continually reside in the same residence with the declarant except for a dependent who is:

- (a) A child who is a full-time student;
- (b) A child or a spouse who is in a facility for the institutional care of a disability;
- (c) A child who is the subject of a child health insurance support agreement; or
- (d) A spouse who is working out of the area of the residence of the declarant.

4. Children declared by the declarant for inclusion in a program coverage unit may include biological children, adopted children, children placed in the residence of the declarant for adoption, stepchildren and any other child who is related to the declarant, if the declarant is legally responsible for the child and the child is financially dependent on the declarant and the program coverage unit of the declarant for care and support. A foster child may not be included in a program coverage unit.

Sec. 27. NAC 287.314 is hereby amended to read as follows:

287.314 1. Except as otherwise provided in subsection 3, a participating public agency shall, upon appointing to the participating public agency a person who will be eligible to participate in the Program pursuant to NRS 287.045, ensure that the employee attends an orientation program conducted by the Program within 60 days after he begins his employment with the participating public agency or, if the employee is unable to attend the orientation program, that the employee receives the packet of information in accordance with NAC 287.317. The Program shall provide to the employee at the orientation program information concerning the benefits provided.

2. A participating state agency which is required to grant release time pursuant to NAC 284.484 shall grant release time to such an employee to attend the orientation program.

3. The provisions of this section do not apply to any person who is employed by the

~~University and Community College System of Nevada.~~ *Nevada System of Higher Education.*

Sec. 28. NAC 287.317 is hereby amended to read as follows:

287.317 1. The Program shall conduct the orientation program required pursuant to NAC 287.314 each month at locations designated by the Program.

2. A participating public agency shall, upon appointing to the participating public agency a person who will be eligible to participate in the Program pursuant to NRS 287.045, request that the Program register the employee for the orientation program at the location which is nearest to the employee's place of employment. The request must be in a format prescribed by the Program and submitted to the Program not later than 7 days after the employee's first day of employment with the participating public agency.

3. The participating public agency shall notify the employee that he must return to the participating public agency or the Program the completed enrollment forms and any supporting documents within 7 days after attending an orientation program prescribed by the Program pursuant to subsection 2. If the employee fails to submit an enrollment form and any supporting documents within 7 days after attending the orientation program, the employee only will be placed in the base plan of the self-funded plan.

4. If an employee cannot attend the orientation program, a complete packet with enrollment information must be provided to the employee. An employee has 60 days from his first day of employment to submit an enrollment form with his selections. If an employee fails to submit an enrollment form within the 60-day period, the employee only will be placed in the base plan of the self-funded plan.

5. If a member of the professional staff of the ~~University and Community College System~~ of Nevada *System of Higher Education* fails to submit an enrollment form within 30 days after

his date of hire, as set forth in his contract, the member only will be placed in the base plan of the self-funded plan.

6. If an employee terminates his employment, the payroll center of the participating public agency which had employed the employee ~~[and the employee shall ensure that]~~ *shall submit notification of the termination to* the Program ~~[is notified of the termination]~~, *on a form prescribed by the Program*, not later than 15 days after the date on which the *participating public agency receives notification that* employment was terminated.

7. As used in this section, “base plan” means the plan designated by the Board as the default plan for the plan year, as described in the plan documents.

Sec. 29. NAC 287.357 is hereby amended to read as follows:

287.357 An application to leave the Program must include, without limitation:

1. A copy of the plan of benefits to be offered under the proposed opt-out plan, including, without limitation, a description of:

(a) The benefits to be provided under the proposed opt-out plan;

(b) The manner for determining eligibility for benefits under the proposed opt-out plan; and

(c) The circumstances under which any participant in the proposed opt-out plan, including, without limitation, active and retired officers and employees, may lose coverage under the proposed opt-out plan.

2. A description of the manner in which initial eligibility for benefits under the proposed opt-out plan will be determined, including, without limitation, whether members of the group will experience any gap in coverage during the period between when the group leaves the Program and coverage is available for the group under the proposed opt-out plan.

3. A list of the proposed participants in the proposed opt-out plan, including, without limitation, the name, social security number and date of birth of each proposed participant.

4. The federal tax identification number of the proposed opt-out plan.

5. Audited financial statements of the proposed opt-out plan, if any, for the 2 years immediately preceding the date of application, which must reflect unqualified opinions by the persons who performed the audit of the financial statements concerning the financial soundness of the proposed opt-out plan.

6. A copy of the contract pursuant to which the members of the group will receive coverage from the proposed opt-out plan. The contract must include, without limitation, the amount of premiums or contributions that will be required to maintain coverage for the members of the group under the proposed opt-out plan.

7. Evidence establishing that the proposed opt-out plan is or will be operated pursuant to such sound accounting and financial management practices as to ensure that the group will continue to receive adequate benefits. Such evidence may include financial statements, annual audits and any other information requested by the Board or determined by the group to be relevant to the financial management practices of the proposed opt-out plan.

8. A completed Business Associate Agreement that is consistent with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and is in a form acceptable to the Board, or a certification that the opt-out plan is a covered entity under and complies with the privacy regulations of that federal Act.

9. If the proposed opt-out plan is secured from an insurer, a copy of the current certificate of authority issued by the Commissioner of Insurance to the insurer which indicates that the insurer

is authorized to provide the coverage proposed to be offered under the proposed opt-out plan in this State.

10. The name and contact information of a representative of the group who will be available to answer questions from the Board concerning the application.

Sec. 30. NAC 287.359 is hereby amended to read as follows:

287.359 1. To apply to leave the Program in the next plan year, a group must submit an application to the Board on or after the 1st day of the 1st month of the current plan year but before the 1st day of the 4th month of the current plan year. If an application is received at any other time during the current plan year, the Board will return the application to the applicant.

2. If additional information is required to process any application, the Board will notify the ~~applicant.~~ *representative of the group who is designated pursuant to NAC 287.357.*

3. *The Board will provide an opportunity for:*

(a) A representative of the Program to present arguments for or against the approval of an application.

(b) The representative of the group who is designated pursuant to NAC 287.357 to present arguments that support the approval of an application.

4. The Board will grant or deny each application received pursuant to subsection 1 not later than the 15th day of the 6th month of the current plan year.

~~4.~~ 5. The Board will notify each applicant of the date and time of the meeting during which the Board will render a decision on the application of the applicant.

Sec. 31. NAC 287.361 is hereby amended to read as follows:

287.361 1. In determining whether to grant or deny an application to leave the Program, the Board:

~~1.1~~ (a) Shall consider whether:

~~1(a)~~ (1) The departure of the group from the Program would cause an increase of more than 5 percent in the costs of premiums or contributions for the remaining participants in the Program;

~~1(b)~~ (2) The proposed opt-out plan is financially sound and operated pursuant to sound accounting and financial management practices; and

~~1(c)~~ (3) The proposed opt-out plan provides adequate benefits at the time of application that includes offering the same coverage to active officers and employees and retired officers and employees using rates based on the commingled experience of all active and retired participants.

~~2.1~~ (b) May consider:

~~2(a)~~ (1) Whether the cumulative impact of a group leaving the Program on the costs of premiums or contributions for the remaining participants in the Program is so detrimental as to cause a significant negative impact on the Program;

~~2(b)~~ (2) Whether the composition of the group indicates adverse selection that would constitute a significant negative impact on the Program;

~~2(c)~~ (3) Whether the current financial condition of the Program is such that the departure of the group would constitute a significant negative impact on the Program;

~~2(d)~~ (4) Whether the departure of the group is administratively feasible;

~~2(e)~~ (5) Whether independent, actuarial or other reviews obtained by the Board indicate that the departure of the group will cause a significant negative impact on the Program; and

~~2(f)~~ (6) Any other information that the Board deems relevant.

2. Findings by the Board concerning the considerations described in subsection 1 must be based exclusively on substantial evidence.

Sec. 32. NAC 287.365 is hereby amended to read as follows:

287.365 A decision of the Board to deny an application of a group to leave the Program will be in writing and will include, without limitation:

1. The reasons of the Board for denying the application . ~~§~~
2. The findings of the Board on the mandatory criteria for review set forth in *paragraph (a)* of subsection 1 of NAC 287.361 . ~~§~~
3. The findings of the Board on any of the optional criteria for review set forth in *paragraph (b) of* subsection ~~2~~ *1* of NAC 287.361 that the Board considered in reaching its decision.
4. A statement that any data, information or report on which the Board relied to make its decision to deny the application is available to the group upon request.

Sec. 33. NAC 287.430 is hereby amended to read as follows:

287.430 A person, other than a person who elects to continue coverage pursuant to the ~~[Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, Title 10 § 10001),]~~ *Public Health Service Act, 42 U.S.C. § 300bb-1(a)*, who:

1. Enrolls, reenrolls, joins or is continuing coverage in the Program; and
 2. Is responsible for the payment of the premium or contribution for group insurance directly to the Program or an insurer,
- ↪ shall pay the premium or contribution to the Program or insurer, as appropriate, no later than the last day of the month of coverage. If the total amount of the premium or contribution is not received by the last day of the month, the coverage will be cancelled effective on the last day of the month that the coverage was fully paid unless the particular contract of coverage or insurance for which payment is being made otherwise provides.

Sec. 34. NAC 287.440 is hereby amended to read as follows:

287.440 The following retired officers and employees may pay premiums or contributions for group coverage or insurance to the Program:

1. ~~[A]~~ *Except as otherwise provided in subsection 2, a* retired officer or employee who is receiving retirement benefits, if the retirement benefit is less than the premium or contribution.

2. A retired officer or employee who ~~[was 55 years of age or older in 1977 and was precluded from participation in the Public Employees' Retirement System until 1979, if the officer or employee:~~

~~—(a) Has at least 5 years of service with the State or any other participating public agency;~~

~~—(b) Would have received a vested interest in retirement benefits but for the amendatory provisions of chapter 594, Statutes of Nevada 1977; and~~

~~—(c) Has reached the age when retirement benefits could have been received had he not been precluded from participation in the System.]~~ *is receiving retirement benefits from the Nevada System of Higher Education.*

Sec. 35. NAC 287.460 is hereby amended to read as follows:

287.460 1. An officer or employee of a participating public agency who:

(a) Is on leave because he was injured in the course of his employment;

(b) Receives compensation for a temporary total disability pursuant to NRS 616C.475; and

(c) Was a participant in the Program at the time of the injury,

↪ may continue coverage or insurance for himself and any of his eligible dependents if he pays the premium or contribution due for coverage or insurance to the participating public agency that employs him. The officer or employee shall report his change of status to the participating public agency that employs him when he takes leave and when he returns to work. Within 15 days after notification of such a change of status by the officer or employee, the participating public agency

shall ~~notify~~ *report to* the Program ~~off~~, *on a form prescribed by the Program*, the change of status of the officer or employee.

2. If the officer or employee does not pay for coverage or insurance for his dependent while he is on leave and returns to work within 1 year after the last day of his coverage from the Program, his dependent may be covered.

Sec. 36. NAC 287.485 is hereby amended to read as follows:

287.485 1. To obtain or reinstate a subsidy on or after July 1, 2004, a retired officer or employee who has at least 5 years of service credit with at least one public employer and who joins or continues to participate in the Program upon retirement must report to the Program, on a form prescribed by the Program, each public employer with which he earned service credit and the period of service with each such public employer.

2. For the purpose of subsection 1, service credit:

(a) Must be computed in the manner set forth in NRS 286.495 or 286.501, as applicable;

(b) Must include any service credit that has been restored by the repayment of contributions that the retired officer or employee had withdrawn from the Public Employees' Retirement System pursuant to NRS 286.430; and

(c) Must not include any service credit that was purchased pursuant to NRS 1A.310 or 286.300.

3. Except as otherwise provided in subsection 9, a public employer shall commence payment of its subsidy for a retired officer or employee on the first day of the month immediately following the date on which the Program receives a completed form from the retired officer or employee pursuant to subsection 1. A retired officer or employee will not be

reimbursed for any subsidy for the period before his subsidy commences pursuant to this subsection.

4. If a public employer disputes the service credit which is reported to the Program by a retired officer or employee pursuant to subsection 1, as indicated on the bill for the subsidy for that retired officer or employee sent by the Program, the public employer may file an appeal with the Executive Officer ~~and~~ *unless an audit related to the same retired officer or employee has been requested and completed pursuant to subsection 6*. Such an appeal must:

- (a) Be submitted in writing within 3 months after the commencement of the billing for the subsidy;
- (b) Set forth the basis of the dispute; and
- (c) Be accompanied by any applicable supporting documentation relating to the requirements for computing credit for service set forth in NRS 286.495 or 286.501.

5. If an appeal is filed pursuant to subsection 4, the Executive Officer shall, within 14 days after receipt of the appeal, request an audit from the appropriate certifying agency to determine the years and months of service credit earned by the retired officer or employee with each public employer of the retired officer or employee.

6. If the total service credit reported to the Program by the retired officer or employee pursuant to subsection 1 does not correspond with the total service credit for that retired officer or employee that is contained in the records of the Program, the Executive Officer shall, within 14 days after receipt of the form from the retired officer or employee pursuant to subsection 1, request an audit from the appropriate certifying agency to determine the years and months of service credit earned by the retired officer or employee with each public employer of the retired officer or employee.

7. If an audit is requested pursuant to subsection 5 or 6, the Executive Officer shall forward all relevant materials relating to the disputed service credit to the appropriate certifying agency.

8. Until an audit requested pursuant to subsection 5 is completed by the certifying agency and submitted to the Program, the public employer of the retired officer or employee shall continue to pay the subsidy at an amount that is based on the service credit reported to the Program by the retired officer or employee pursuant to subsection 1.

9. Until an audit requested pursuant to subsection 6 is completed by the certifying agency and submitted to the Program, the Program shall not bill the subsidy for the retired officer or employee to any public employer.

10. The results of an audit conducted by a certifying agency is the final determination of the service credit earned by the retired officer or employee with each public employer of the retired officer or employee.

11. If the results of an audit conducted by a certifying agency require an adjustment of the amount of a subsidy for a retired officer or employee:

(a) For an audit requested pursuant to subsection 5, except as otherwise provided in this paragraph, the Program shall adjust the amount of the subsidy as of the first day of the month for which the appeal was filed. If the audit is not completed within 6 months after the first day of the month for which the appeal was filed, the Program shall adjust the amount of the subsidy as of the first day of the first month that is 6 months before the month in which the audit was completed.

(b) For an audit requested pursuant to subsection 6, except as otherwise provided in this paragraph, the Program shall adjust the amount of the subsidy as of the first day of the month following the date on which the retired officer or employee submitted a form pursuant to

subsection 1. If the audit is not completed within 3 months after submission of the form, the Program shall adjust the amount of the subsidy as of the first day of the first month that is 3 months before the month in which the audit was completed.

Sec. 37. NAC 287.500 is hereby amended to read as follows:

287.500 1. If a seasonal employee returns to work with a participating public agency, the participating public agency shall determine if the employee participated in the Program or was eligible to participate during his previous employment with the participating public agency.

2. A seasonal employee who was eligible to participate in the Program during his previous employment with a participating public agency and who returns to work within 1 year after the termination of his employment is eligible to participate in the Program on the first day of the month following his return to work.

3. A seasonal employee who returns to work 1 year or more after the termination of his previous employment is eligible to participate in the Program on the first day of the month following the completion of 90 days of full-time employment.

4. ~~[An employee on a 4- to 6-month biennial plan]~~ *A biennial employee* who was working for a participating state agency is not subject to any waiting period upon reenrollment if the *biennial* employee:

(a) Plans to return, and does return, to the same or a similar position in the next authorized biennial employment period; and

(b) Continues to pay his full premium or contribution and allowable administrative fees as required by NRS 287.0467 for the enrolled coverage between biennial employment periods.

Sec. 38. NAC 287.510 is hereby amended to read as follows:

287.510 If a person *other than a retired officer or employee* returns to work for a participating public agency with which the person was previously employed within 1 year after leaving employment:

1. The person ~~[must resume the coverage and insurance chosen before he left employment, unless he is otherwise entitled to make a change because of a qualifying event, until the next open enrollment period for all participants or, if the employee is a seasonal employee and not eligible to make changes during the next open enrollment period, the next open enrollment period in which he is eligible to make changes;]~~ *may select any coverage and insurance offered to participants in the Program at the time that the person returns to work;* and

2. Coverage and insurance for the person is effective on the effective date of his reemployment if that day is on the first day of the month or, if the effective date of reemployment is not on the first day of the month, on the first day of the month following the effective date of his reemployment, as appropriate.

Sec. 39. NAC 287.610 is hereby amended to read as follows:

287.610 ~~[1.—A claim made to the Program before March 22, 2004, must be submitted to the Claims Administrator of the Program no later than 15 months after the date on which the expense reported in the claim is incurred. A claim submitted after that time will not be paid.~~

~~—2.]~~ A claim made to the Program ~~[after March 22, 2004,]~~ must be submitted to the Claims Administrator of the Program ~~[no]~~ *not* later than 1 year after the date on which the expense reported in the claim is incurred. A claim submitted after that time will not be paid.

Sec. 40. NAC 287.690 is hereby amended to read as follows:

287.690 1. If a participant in the Program is not satisfied with the decision of the Executive Officer or his designee on the appeal made by the participant, the participant may file

an appeal with the Board for a review by the Board of the claim. The appeal must be filed within 35 days after the date on which the Executive Officer or his designee issues the written decision concerning the review.

2. Except as otherwise provided in this subsection, after the receipt of an appeal pursuant to this section, the Executive Officer or his designee shall present a report to the Board at its next meeting. If an appeal is received after the deadline for placing items on the agenda for the next meeting of the Board, the Executive Officer or his designee shall present the report to the Board at its next following meeting. The report presented to the Board must include the grounds for the appeal, supporting documentation, information concerning the claim and recommendations for action by the Board.

3. Not later than 10 days before the date of the meeting in which an appeal that was made by a participant pursuant to this section will be heard by the Board, the Executive Officer or his designee shall notify the participant in writing of the date, time and place of the meeting.

4. The participant may appear with ~~counsel~~ *an attorney or other representative of his choosing* before the Board in a closed portion of an open meeting *held* pursuant to NRS 241.030 to review orally his claim and the reasons why he is not satisfied with the adjudication of the claim.

5. *Except as otherwise provided in NRS 241.033, the Chairman may at any time before or during the closed portion of the open meeting determine which additional persons, if any, are allowed to attend the closed portion of the open meeting. The Board may allow the Claims Administrator of the Program to present an explanation of the decision that the Claims Administrator made pursuant to NAC 287.670 at the closed portion of the open meeting.*

6. The Board may render a decision on the claim at that time during its open meeting or defer action to a future meeting if additional information is required for review.

~~6.7~~ 7. The Executive Officer or his designee shall mail to the participant by first-class mail notice of the decision of the Board within 15 days after the decision is rendered.

~~7.7~~ 8. A decision of the Board is final.

Sec. 41. NAC 287.480 is hereby repealed.

TEXT OF REPEALED SECTION

287.480 Subsidy for retired officer or employee: Cessation date and reinstatement; verification of service credit and adjustment of amount of subsidy.

1. A subsidy received by a retired officer or employee on or before June 30, 2004, ceases on June 30, 2004. To reinstate such a subsidy, the retired officer or employee must comply with the requirements of NAC 287.485.

2. For a subsidy billed to a public employer for a retired officer or employee between October 1, 2003, and June 30, 2004, if the public employer or the retired officer or employee disputes the service credit of the retired officer or employee, the Program shall request verification of that information from the appropriate certifying agency. If the results of the verification of the service credit require an adjustment of the amount of the subsidy, the Program shall adjust the amount of the subsidy as of the first day of the month in which the retired officer or employee began receiving the subsidy.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R089-05**

The Board of the Public Employees' Benefits Program adopted regulations assigned LCB File No. R089-05 which pertain to chapter 287 of the Nevada Administrative Code on October 6, 2005.

Notice date: 7/15/2005; 9/2/2005

Date of adoption by agency: 10/6/2005

Hearing date: 8/2/2005; 10/6/2005

Filing date: 6/28/2006

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Two workshops and an adoption hearing were held. Public comment was solicited by sending notices of the workshops and the adoption hearing to all state agencies, the Nevada State Library, all Nevada county libraries, and all persons who requested these notices.

A summary of public response may be obtained from Vicki Smerdon with the Public Employees' Benefits Program at 775-684-7020 or 800-326-5496.

2. The number of persons who:

(a) **Attended the August 2, 2005 workshop: 28**

(b) **Attended the October 6, 2005 workshop and adoption hearing: 47**

(c) **Testified at the August 2, 2005 workshop: 8**

(d) **Testified at the October 6, 2005 workshop and adoption hearing: 7**

(e) **Submitted to the agency written comments: 3**

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

See response to number 1 above.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was changed as a result of public comments.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) **Both adverse and beneficial effects; and**

(b) **Both immediate and long-term effects.**

- (a) No adverse or beneficial effects; and
- (b) No immediate or long term effects.

6. The estimated cost to the agency for enforcement of the proposed regulation.

None.

7. A description of any regulations of the state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are none.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

There are none.

9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide or involve a new fee.