

LCB File No. R097-03

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

Notice Of Workshop To Solicit Comments On Proposed Regulation

The Public Employees' Benefits Program, 400 West King Street, Suite 300, Carson City, Nevada 89703, (775) 684-7000 or (800) 326-5496, is proposing the adoption, amendment, and repeal of regulations pertaining to chapter 287 of the Nevada Administrative Code. A second workshop has been set for 1:00 p.m., on **August 6, 2003**, at the Legislative Building, 401 South Carson Street, Room 1214, Carson City, Nevada, and videoconference to the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. A third workshop has been set for 1:00 p.m., on **August 21, 2003**, at the Legislative Building, 401 South Carson Street, Room 4100, Carson City, Nevada, and videoconference to the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

- 1. Application process for state group(s) withdrawing from participation in PEBP;**
- 2. Administrative procedures and requirements regarding enrollment, eligibility, and premium accounting for individuals within state group(s) that have withdrawn from participation in PEBP; and**
- 3. related matters.**

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Public Employees' Benefits Program, 400 West King Street, Suite 300, Carson City, Nevada 89703, (775) 684-7000 or (800) 326-5496. A reasonable fee for copying may be charged. You may also access the information at Public Employees' Benefits Program's web site at <http://www.pebp.state.nv.us>.

This notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

ALL NEVADA COUNTY LIBRARIES, NEVADA STATE LIBRARY, LEGISLATIVE COUNSEL BUREAU, BLASDEL BUILDING, 209 East Musser Street, Carson City; PUBLIC EMPLOYEES' BENEFITS PROGRAM, 400 W. King Street #300, Carson City; MOTOR VEHICLES & PUBLIC SAFETY BLDG., 305 Galetti Way, Reno; GOVERNOR'S OFFICE-LAS VEGAS, 555 E. Washington Ave. Suite 5100, Las Vegas; MOTOR VEHICLES & PUBLIC SAFETY, 2701 E. Sahara Ave., Las Vegas; UNLV - HUMAN RESOURCES OFFICE, 4505 Maryland Parkway, Las Vegas; UNR - ARTEMESIA BUILDING, 70 Artemesia Way, Reno. In addition, the notice was mailed to all State agencies and to groups and individuals as requested.

LCB File No. R097-03
PROPOSED REGULATION OF THE BOARD OF THE
PUBLIC EMPLOYEES' BENEFITS PROGRAM

NOTICE OF INTENT TO ACT UPON A PROPOSED
PERMANENT REGULATION

Notice of Hearing for the Adoption of Regulation
of the Public Employees' Benefits Program

The Public Employees' Benefits Program will hold a public hearing at 10:00 a.m., on **September 4, 2003**, at the Legislative Building, 401 South Carson Street, Room 1214, Carson City, Nevada, videoconference to the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption 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.
NRS 287.0479(4) directs the Board to adopt regulations establishing the criteria pursuant to which the Board will approve proposed contracts for groups of 300 to leave the Plan.
2. Either the terms or the substance of the regulations to be adopted or a description of the subjects and issues involved.
See attached proposed permanent 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 known at this time
Beneficial effects: None known at this time
 - (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.
None.

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.
No.

Persons wishing to comment upon the proposed action of Public Employees' Benefits Program 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: Vicki Smerdon, 400 West King Street, Suite 300, Carson City, Nevada 89703. Written submissions must be received by the Public Employees' Benefits Program on or before Tuesday, September 2, 2003. 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 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 regulations to be adopted will be available at the Public Employees' Benefits Program, 400 West King Street, Suite 300, 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 regulations 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 <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 adoption.

This notice of hearing has been posted at the following locations:

NEVADA STATE LIBRARY, LEGISLATIVE COUNSEL BUREAU, BLASDEL BUILDING, 209 East Musser Street, Carson City; PUBLIC EMPLOYEES' BENEFITS PROGRAM, 400 W. King Street #300, Carson City; MOTOR VEHICLES & PUBLIC SAFETY BLDG., 305 Galetti

Way, Reno; GOVERNOR'S OFFICE-LAS VEGAS, 555 E. Washington Ave. Suite 5100, Las Vegas; MOTOR VEHICLES & PUBLIC SAFETY, 2701 E. Sahara Ave., Las Vegas; UNLV - HUMAN RESOURCES OFFICE, 4505 Maryland Pkway, Las Vegas; UNR - ARTEMESIA BUILDING, 70 Artemesia Way, Reno. In addition, the notice was mailed to all State agencies and to groups and individuals as requested.

LCB File No. R097-03
PROPOSED REGULATION OF THE BOARD OF THE
PUBLIC EMPLOYEES' BENEFITS PROGRAM

PROPOSED LANGUAGE
FOR GROUPS OF 300 ADMINISTRATIVE REGULATIONS
August 2003

The Public Employees' Benefits Program is preparing for the implementation of the "groups of 300" provided for in NRS 287.0479. The administrative regulations are being developed in the following order:

1. Application process
 - * An outline of the application and PEBP Board approval process is included in Attachment A.
2. Administrative rules
 - * The general flow of information is outlined in Attachment B as background information.
 - * The enrollment and eligibility process is being developed at this time.
 - * The financial billing and State subsidy pass-through process is included in Attachment C.

The tentative schedule for consideration and adoption by the PEBP Board is shown below:

Posting for 2 nd & 3 rd Workshop	7/17/03
2 nd Workshop Date	8/6/03
3 rd Workshop Date	8/21/03
Posting for Adoption Hearing	8/4/03
Adoption Hearing Date	9/4/03

PEBP – Groups of 300
PROPOSED REGULATIONS – Application Process
DRAFT JULY 2003

1. Group of Not Less Than 300 Defined. "Group of not less than 300 participants" means a group of not less than 300 officers, employees and retired employees, or any combination thereof, that complies with applicable state and federal nondiscrimination requirements. A group of not less than 300 participants shall not be deemed a "vendor" within the meaning of NAC 287.145.
2. Notice of Intent to Leave the Program. A group of not less than 300 participants may apply to the board to leave the program in accordance with NRS 287.0479 to obtain an alternative employee benefit plan or alternative insurance for life, accident or health insurance (hereinafter referred to as an "Opt Out Plan" that provides adequate benefits at the time of application, if the group provides to the executive officer a letter of intention

to entirely leave the program and forego all program benefits, and submits an application to leave the program as described herein.

- a. “Opt Out Plan” defined. “Opt Out Plan means a group of not less than 300 participants that applies to the board to leave the program in accordance with NRS 287.0479 to obtain an alternative employee benefit plan or alternative insurance for life, accident or health insurance.
3. Eligible Opt Out Plan. A group of not less than 300 participants may apply to the board to leave the program in accordance with NRS 287.0479 to obtain health coverage for life, accident or health insurance, or any combination thereof, from an:
 - a. Insurer that is authorized by the commissioner of insurance to provide such insurance; or
 - b. Employee benefit plan, as defined in 29 U.S.C. Sec. 1002(3), that has been approved by the board.
 4. Contents of Application to Leave Program. A group of not less than 300 participants that applies to the board to leave the program must file with the board an application to leave the program, along with 15 copies thereof, which shall include:
 - a. A copy of the plan of benefits, including a summary plan description, eligibility rules and a description of circumstances under which participants may lose coverage under the Opt Out Plan, including active employees and retirees.
 - b. A description of initial eligibility rules for participants, including whether members of a group of not less than 300 will experience any gap in coverage upon departing from the program.
 - c. A list of the members of the group of not less than 300 participants, applying to leave the program including names, social security numbers and dates of birth of each such participant.
 - d. The federal tax identification number of the Opt Out Plan.
 - e. Audited financial statements of the Opt Out Plan for the previous two (2) years, which must reflect unqualified opinions concerning the financial soundness of the Opt Out Plan.
 - f. A copy of the contract pursuant to which the members of the group of not less than 300 participants will receive coverage from the Opt Out Plan. The contract must include the amount of contributions that will be required to maintain coverage. The board shall be permitted to deduct actual administrative costs related to remitting premiums or contributions on behalf of members of the group.

- h. Evidence establishing that the Opt Out Plan is operated pursuant to such sound accounting and financial management practices as to ensure that the group will continue to receive adequate benefits, including, but not limited to, financial statements, annual audits and other information reasonably requested by the board or determined by the applicant to be relevant to its financial management practices.
- i. A completed Business Associate agreement, consistent with the Health Insurance Portability and Accountability Act (“HIPAA”) in a form acceptable to the board, or a certification that the Opt Out Plan is a covered entity under HIPAA’s privacy regulations, and complies therewith.
- j. In the case of an insurer, the application to leave the program shall also include a copy of a current certificate issued by the commissioner of insurance to the insurer that will provide the intended coverage or insurance in this state.

5. Review of Applications by Board.

a. Schedule.

- i. Applications to leave the program shall be accepted year-round. Applications received prior to the fourth month of the program’s plan year (hereinafter referred to as an “Annual Application Group”) shall be processed and reviewed for potential departure as of the first day of the next plan year. Applications received after the third month of the plan year shall be reviewed as part of the next plan year’s Annual Application Group.
- ii. Applications that are part of an Annual Application Group shall be processed during the fourth month of the program’s plan year. During processing, the applicant will be notified of any additional information required by the board to begin its review of the application.
- iii. During the fifth and sixth months of the program’s plan year, applications in the Annual Application Group shall be reviewed by the board, which shall apply the criteria set forth in the Subsection (b) hereof to determine whether to permit the group of not less than 300 participants to depart from the program.
- iv. The board shall render its decision on each application in the Annual Application Group no later than the first day of the seventh month of the program’s plan year.
- v. Each application for departure from the program shall be placed on the agenda and discussed during an open meeting of the board, at which the

applicant may appear and address the board. The board shall notify each applicant of the date and time of such meeting.

- v. “Annual Application Group” defined. Annual Application Group means a group that submits its application to leave the program prior to the fourth month of the program’s plan year.

b. Criteria for Allowing Departure from Program. The board has discretion to grant or deny an application to leave the program filed hereunder, subject to the following:

i. Mandatory Criteria. The following requirements must be considered by the board and satisfied by the applicant:

- (1) Whether the departure of the group from the program would cause an increase of more than five (5) percent in the costs of premiums or contributions for the remaining participants in the program.
- (2) Whether the Opt Out Plan is financially sound and operated pursuant to sound accounting and financial management practices.
- (3) Whether the Opt Out Plan provides adequate benefits.

ii. Optional Criteria. The following criteria may, but are not required to, be considered by the board:

- (1) Whether the cumulative impact of groups departing 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) Whether the make up of the departing group indicates negative selection among participants and such negative selection would constitute a significant negative impact on the program.
- (3) Whether the current financial condition of the program is such that the departure of the group will constitute a significant negative impact on the program.
- (4) Whether departure of the group is administratively feasible.
- (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.
- (6) Such other matters as the board deems relevant to its review.

iii. Contents of Board's Decision Granting Permission to Depart. A decision of the board to grant an application to leave the program shall be in writing and include:

- (1) The effective date of the group's departure from the program, and the dates for completion of any administrative tasks necessary to effect departure.
- (2) A release and waiver of rights agreement, in a form acceptable to the board, which must be signed and returned by each participant in the group of not less than 300. Such release and waiver of rights agreement shall include a description of the circumstances, if any, under which a member of the group of not less than 300 participants, both active employees and retirees, may return to the program.
- (3) A contract between the program and the Opt Out Plan, in a form acceptable to the board, setting forth the terms of coverage for the group of not less than 300 participants, provisions for payment of premiums or contributions to the Opt Out Plan, and such other details necessary to effect departure from the program. Such contract must include provisions regarding the return to the program of members of the group of not less than 300, both active employees and retirees, individually and as a group.
- (4) A provision stating that the applicant will comply with all provisions of the board's decision by the 15th day of the 8th month of the plan year, and that upon failure to comply, the board may declare the contract void.

iv. Contents of Board's Decision Denying Permission to Depart. A decision of the board to deny an application to leave the program shall be in writing and include:

- (1) The board's reasons for denying the application.
- (2) The board's findings on the mandatory review criteria.
- (3) A list of the optional criteria considered by the board and its findings thereon.
- (4) A statement that any data or reports relied on by the board shall be made available to the applicant.

6. Reconsideration and Judicial Review of Denied Applications.

- a. An applicant that has been denied permission to depart from the program may file a request for reconsideration by the board within 15 days of the decision, including any additional information determined by the applicant to be relevant to reconsideration. The board shall hold a reconsideration hearing within thirty (30) days of receiving the request. The board will render its decision within 5 working days of the conclusion of the hearing.
- b. A group of not less than 300 participants that has been denied permission to depart from the program, or the Opt Out Plan, or both, may file a petition for judicial review in first Judicial District Court within thirty (30) days following the board's denial of an initial application, or denial of a request for consideration, whichever is later. The filing of a request for reconsideration is not a condition precedent to a group's or Opt Out Plan's rights to seek judicial review and the failure to seek reconsideration by the board shall not be deemed a failure to exhaust administrative remedies.
- c. The standard of judicial review of the board's decision shall be abuse of discretion.

7. Departure from the Program.

- a. The board will consider a group of not less than 300 participants that has been approved to depart to have officially left the program on the first day of the plan year that is at least 120 days after the date on which the application is approved by the board (hereinafter referred to as the "Departure Date").
- b. Participants in a group of not less than 300 shall remain covered under the program until the Departure Date.
- c. A group of not less than 300 participants that chooses not to leave the program may rescind its decision to leave the program if, before the Departure Date, the group notifies the board that the decision of the group is to remain in the program.
- d. "Departure Date" defined. "Departure Date means the first day of the plan year that is at least 120 days after the date on which the application of a group of not less than 300 participants is approved by the board.

8. New Members of Group.

- a. In the event a newly hired employee is a member of a group of not less than 300 participants that has previously left the program, such employee may select coverage under the Opt Out Plan instead of the program upon commencing employment.

- b. In the event an employee who becomes a member of a group of not less than 300 participants that has already left the program was not part of such group at the time it departed from the program, or was a member of such group but elected not to depart from the Program, such employee shall receive the option, at the next open enrollment, to select the Opt Out Plan in lieu of the program.
- c. It shall be the responsibility of the employee or the Opt Out Plan to notify the program that an employee is eligible to select the Opt Out Plan as a member of the group of not less than 300 participants, and the failure to provide such notice to the program may result in ineligibility to select the Opt Out Plan upon initial employment or at open enrollment.

9. Miscellaneous.

- a. To the extent any benefit of employment, other than eligibility for benefits from the program, is condition on continued participation in the program, participation in an approved Opt Out Plan shall be deemed continued participation in the program for the purposes of such benefit.

General Flow of Information

- A. PEBP will maintain enrollment data
 - 1. This will be same as for any other participants
- B. PEBP will bill Paycenters
 - 1. Group(s) of 300 rates will be maintained separately in IFMC
 - 2. Rates billed will be equal to same State subsidy plus Group(s) of 300 dependent premiums
 - 3. Paycenters will also have to maintain different rates for Group(s) of 300 participants
- C. Paycenters will remit payment to PEBP
- D. PEBP will reconcile payment to billing
 - 1. Included in same reconciliation process
- E. PEBP will pay Group(s) of 300 amount received from Paycenter less PEBP admin fee
 - 1. Admin fee will be assessed on a PPM basis from enrollment records
- F. Reconciliations discrepancies
 - 1. Will be included with overall enrollment reconciliation process
 - 2. Will be reported to Group(s) of 300

Fee Collection & State Subsidy Pass-through Process

Contribution Rates for Group(s) of 300

- 1. Each Group of 300 shall provide their contribution rate schedule to PEBP no later than 60 days prior to any effective date for said rates.

2. Contribution rates for each Group of 300 will be maintained separately in PEBP's enrollment/billing information system.
3. Each Group of 300 contribution rates shall be considered in the same manner as PEBP contribution rates with respect to any State subsidy.
 - a. The State subsidy for active employees and retirees shall be calculated in the same manner as for other PEBP participants
 - b. Contribution rates in excess of the calculated State subsidy shall be assessed directly to the participant.

Monthly PEBP Billing

1. Paycenter Group Billings for active or retired participants:
 - a. PEBP will bill Paycenters for Group of 300 participants identified as such through the enrollment process. These billings will be done at the same time as Paycenter Group bills for non-Group of 300 PEBP participants.
 - b. Contribution rates billed will be per each Group of 300's contribution rate schedule.
 - c. Paycenters will also have to maintain different rates for Group(s) of 300 participants
2. Direct Pay Billings for active or retired participants:
 - a. PEBP will bill Group of 300 participants directly if identified as such through the enrollment process. These billings will be done at the same time as other Direct Bills for non-Group of 300 PEBP participants.
 - b. Contribution rates billed will be per each Group of 300's contribution rate schedule.
3. Billing for State retiree subsidy:
 - a. PEBP will maintain a separate accounting for retiree subsidy attributable to Group of 300 participants from other PEBP participants.
 - b. The retiree subsidy will be billed to the Retired Employees' Group Insurance Budget account on a monthly basis.

Contribution Rate Payment to PEBP

1. Paycenter Group Payments for active or retired participants:
 - a. Paycenters will separately identify the portion of their payment to PEBP that is attributable to each Group of 300 participant. These payments will be made at the same time as Paycenter Group payments for non-Group of 300 PEBP participants.
 - b. Paycenters will report payment detail for Group of 300 participants in the same manner as done for non-Group of 300 participants per PEBP procedures. This detail is necessary in order to adequately reconcile payment with enrollment records.
 - c. PEBP will not initiate termination for non-payment of premium by any Group of 300 participant who is billed through a Paycenter. This decision will be the responsibility of the affected Group of 300 entity upon notice from PEBP of the non-payment.
2. Direct Pay active or retired participant payments:

- a. Group of 300 participants who are billed directly by PEBP will be required to follow the same procedures established for any non-Group of 300 participant who is billed directly.
 - b. PEBP will not initiate termination for non-payment of premium by any Group of 300 participant who is billed directly. This decision will be the responsibility of the affected Group of 300 entity upon notice from PEBP of the non-payment.
3. Billing for State retiree subsidy:
 - a. The State retiree subsidy will be transferred from the Retired Employees' Group Insurance Budget account in accordance with the billed amount on a monthly basis, subject to adequate funding in the Retired Employees' Group Insurance Budget account

PEBP Administrative Fee

1. PEBP will establish an administrative fee. The administrative fee shall be expressed as a dollar amount per enrolled participant per month (PEPM).
2. The administrative fee shall be calculated no later than September 1, 2003 for FY2004 and no later than 60 days prior to the beginning of each subsequent fiscal year.
3. The amount of this administrative fee shall be communicated to each applicant group in writing within 30 days of PEBP's receipt of the application.

PEBP Remittance of Contribution Payments to each Group of 300

1. PEBP will account for all payments actually received from all Paycenters and Direct Billed participants that are enrolled in any Group of 300.
2. On a monthly basis, the Contribution payments actually received shall be remitted to each applicable group of 300 less the amount of administrative fee for the premium month's enrollment.
3. Detailed reports are to be provided to each affected Group of 300 comprising the participant payment detail and the administrative fee calculation.

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

Please note: "Program" is defined as the Public Employees' Benefits Program for the chapter in NAC 287.105.

Section. 1. Chapter 287 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive of this regulation to read as follows:

DEFINITIONS

Sec. 2. *"Annual Application Group" means a group that submits its application to leave the Program before the fourth month of the Program's current plan year.*

Sec. 3. *"Group of 300" means a group of not less than 300 officers, employees and retired employees, or any combination thereof, that complies with applicable state and federal nondiscrimination requirements. The term does not include a group of less than 300 participants. Such a group shall not be deemed a "vendor" within the meaning of NAC 287.145.*

Sec. 4. *"Opt-Out Plan" means a proposed alternative plan of coverage sought by a Group of 300 that applies to the Board to leave the Program in accordance with NRS 287.0479 to obtain an alternative employee benefit plan or alternative insurance for life, accident or health insurance.*

APPLICATION PROCESS

Sec. 5. *A Group of 300 may apply to the Board to leave the Program in accordance with NRS 287.0479 to obtain an alternative employee benefit plan or alternative insurance for life, accident or health insurance if the group:*

- 1. Provides to the Executive Officer a letter of intent to leave the Program entirely and forego all benefits of the Program; and*
- 2. Submits an application to leave the Program pursuant to section 7 of this regulation.*

Sec. 6. *A Group of 300 may apply to the Board to leave the Program in accordance with NRS 287.0479 to obtain health coverage for life, accident or health insurance, or any combination thereof, from an:*

- 1. Insurer that is authorized by the Commissioner of Insurance to provide such insurance;*
or
- 2. Employee benefit plan, as defined in 29 U.S.C. § 1002(3), that has been approved by the Board.*

Sec. 7. *A Group of 300 that applies to the Board to leave the program shall file with the Board an application to leave the program, along with 15 copies thereof, which must include:*

1. A copy of the plan of benefits, including a summary plan description, eligibility rules and a description of circumstances under which participants may lose coverage under the Opt-Out Plan, including active employees and retirees.

2. A description of the initial eligibility rules for participants, including whether members of a Group of 300 will experience any gap in coverage upon departing from the Program.

3. A list of the members of the Group of 300 who have applied to leave the Program including names, social security numbers and dates of birth of each such participant.

4. The federal tax identification number of the Opt-Out Plan.

5. Audited financial statements of the Opt-Out Plan for the previous 2 years which must reflect unqualified opinions concerning the financial soundness of the Opt-Out Plan.

6. A copy of the contract pursuant to which the members of the Group of 300 will receive coverage from the Opt-Out Plan. The contract must include the amount of contributions that will be required to maintain coverage. The Board shall be permitted to deduct an administrative fee as stated in section 24 related to remitting premiums or contributions on behalf of the members of the Group of 300.

7. Evidence establishing that the Opt-Out Plan is operated pursuant to such sound accounting and financial management practices to ensure that the Group of 300 will continue to receive adequate benefits, including, but not limited to, financial statements, annual audits and other information reasonably requested by the Board or determined by the Group of 300 to be relevant to its financial management practices.

8. A completed Business Associate agreement, consistent with the Health Insurance Portability and Accountability Act (HIPAA) in a form acceptable to the Board, or a certification that the Opt-Out Plan is a covered entity under HIPAA's privacy regulations and complies therewith.

9 In the case of an insurer, a copy of a current certificate issued by the Commissioner of Insurance to the insurer that will provide the intended coverage or insurance in this state.

Sec. 8. *1. Applications to leave the Program shall be accepted year-round. Applications received before the fourth month of the Program's current plan year must be processed and reviewed for potential departure on the first day of the next plan year. Applications received after the third month of the current plan year must be reviewed as part of the next plan year's Annual Application Group.*

2. Applications that are part of an Annual Application Group shall be processed during the fourth month of the Program's current plan year. During processing, the Group of 300 will be notified of any additional information required by the Board to begin its review of the application.

3. During the fifth month and first 15 days of the sixth month of the Program's current plan year, applications in the Annual Application Group must be reviewed by the Board, which shall apply the criteria set forth in the section 9 of this regulation to determine whether to permit the Group of 300 to depart from the Program.

4. The Board shall render its decision on each application in the Annual Application Group no later than the 15th day of the sixth month of the Program's current plan year.

5. Each application for departure from the Program must be placed on the agenda and discussed during an open meeting of the Board, at which time the Group of 300 may appear

and address the Board. The Board shall notify each applicant of the date and time of such a meeting.

Sec. 9. 1. *The Board has the discretion to grant or deny an application to leave the Program. The Board shall review the application to ensure that:*

(a) The departure of the Group of 300 from the program would not cause an increase of more than 5 percent in the costs of premiums or contributions for the remaining participants in the program;

(b) The Opt-Out Plan is financially sound and operated pursuant to sound accounting and financial management practices; and

(c) The Opt-Out Plan provides adequate benefits at the time of application that includes offering the same coverage to actives and retirees using rates based on the commingled experience of all active and retiree participants.

2. *In addition to the requirements of subsection 1, the Board may consider:*

(a) Whether the cumulative impact of a Group of 300 departing 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.

(b) Whether the composition of the departing Group of 300 indicates adverse selection among participants and such adverse selection would constitute a significant negative impact on the Program.

(c) Whether the current financial condition of the Program is such that the departure of the Group of 300 would constitute a significant negative impact on the Program.

(d) Whether departure of the Group of 300 is administratively feasible.

(e) Whether independent, actuarial or other reviews obtained by the Board indicate that the departure of the Group of 300 will cause a significant negative impact on the Program.

(f) Any other matters that the Board deems relevant to its review.

Sec. 10. *A decision of the Board to grant an application to leave the Program shall be in writing and include:*

1. *The effective date of departure of the Group of 300 from the Program and the dates for completion of any administrative tasks necessary to effect departure.*

2. *A release and waiver of rights agreement, in a form acceptable to the Board, which must be signed and returned by each participant in the Group of 300. Such a release and waiver of rights agreement shall include a description of the circumstances, if any, under which a member of the Group of 300, including both active and retired employees, may return to the Program.*

3. *A contract between the Program and the Opt-Out Plan, in a form acceptable to the Board, setting forth the terms of coverage for the Group of 300, provisions for payment of premiums or contributions to the Opt-Out Plan and such other details necessary to effect departure from the Program. The contract must include provisions regarding the return to the Program of members of the Group of 300, including both active and retired employees, individually and as a group.*

4. *A provision stating that the Group of 300 will, comply with all provisions of the Board's decision by the 25th day of the eighth month of the current plan year. If the Group of 300 fails to comply with any provision of the Board's decision, the Board may declare the contract void.*

Sec. 11. *A decision of the Board to deny an application to leave the Program must be in writing and include:*

- 1. The Board's reasons for denying the application;*
- 2. The Board's findings on the mandatory review criteria set forth in subsection 1 of section 9 of this regulation;*
- 3. A list of the optional criteria considered by the Board set forth in subsection 2 of section 9 of this regulation; and*
- 4. A statement that any data, information or report relied upon by the Board shall be made available to the Group of 300.*

Sec. 12. *1. A Group of 300 that has been denied permission to depart from the Program may file a request for reconsideration with the Board within 40 days after the decision and include any additional information determined by the Group of 300 to be relevant to reconsideration. The Board shall hold a reconsideration hearing and render its decision within 30 days after receiving the request.*

2. A Group of 300 that has been denied permission to depart from the Program or the Opt-Out Plan, or both, may file a petition for judicial review in the First Judicial District Court within 30 days after the board's denial of an initial application, or denial of a request for consideration, whichever is later. The filing of a request for reconsideration is not a condition precedent to the rights of the Group of 300 or Opt-Out Plan's to seek judicial review. The failure to seek reconsideration by the Board shall not be deemed a failure to exhaust administrative remedies.

3. The standard of judicial review of the Board's decision shall be governed by NRS 233B.

Sec. 13. *1. The Board will consider a Group of 300 that has been approved to depart to have officially left the Program on its departure date.*

2. Participants in a Group of 300 will remain covered under the Program until the departure date.

3. A Group of 300 that chooses not to leave the Program may rescind its decision to leave the Program if, before the departure date, the group notifies the Board that the decision of the group is to remain in the Program.

4. As used in this section, "departure date" means the first day of the plan year that is at least 120 days after the date on which the Board approves the application of a Group of 300.

Sec. 14. *1. If a newly hired employee is a member of a Group of 300 that has previously left the Program, the employee may select coverage under the Opt-Out Plan instead of the Program upon commencing employment.*

2. If an employee who becomes a member of a Group of 300 that has already left the Program was not part of such a Group of 300 at the time it departed from the Program, or was a member of such a Group of 300 but elected not to depart from the Program, the employee shall receive the option to select the Opt-Out Plan in lieu of the Program at the next open enrollment.

3. It is the responsibility of the employee or the Administrator of the Opt-Out Plan to notify the Program that an employee is eligible to select the Opt-Out Plan as a member of the Group of 300. The failure to provide such notification to the Program may result in ineligibility for the employee to select the Opt-Out Plan upon initial employment or at open enrollment.

Sec. 15. *To the extent that any benefit of employment, other than eligibility for benefits from the program, is a condition of continued participation in the Program, participation in an approved Opt-Out Plan shall be deemed continued participation in the Program for the purposes of such a benefit.*

ELIGIBILITY

Sec. 16. *As the agency of record, the Program is responsible for communicating benefit eligibility to all employees, retirees and surviving spouses of retirees or employees. Because of this obligation to communicate plan options, the Program must accurately enroll participants in the available benefit plans in a timely manner.*

Sec. 17. *Notification to the Program of enrollment or eligibility changes is required as follows:*

1. Within 15 calendar days of a qualifying change, the Opt-Out Plan must notify the Program of the corresponding dependent tier changes regarding their participants in an electronic format acceptable to the Program.

2. If the employee has declined participation in both the Program and Opt-Out plans, the employee must notify the Program within 31 days of the receipt of a Qualified Medical Child Support Order (QMSCO), life status change, or addition of a dependent that initiates eligibility for both the declined employee and any affected dependent.

Sec. 18. *Opt-Out Plans must follow the eligibility requirements set forth in this chapter and chapter 287 of NRS, including, but not limited to, the following:*

1. Notice of worker compensation leave, military leave, Family Medical Leave Act, or leave without pay and associated coverage changes must be processed according to the regulations of the Program and the Department of Personnel.

2. A Qualified Medical Child Support Order must be processed according to the Program's plan.

3. Termination from employment must be processed in accordance to regulations of the Program and the Department of Personnel.

4. The open enrollment period of the Program is the only time a participant may select a different Opt-Out Plan or Program plan. There must not be a lapse in coverage for the participant during such transitional changes.

5. When a participant becomes a retiree or survivor, the participant may not change plans until the next Program open enrollment.

6. An Opt-Out Plan may be selected by a newly hired employee or during the annual open enrollment of the Program.

7. When an employee joins an Opt-Out Plan, such a decision is not considered a declination of coverage.

Sec. 19. *A Group of 300 must notify the Program at least 90 days before a new Program plan year the plan options that are available through an Opt-Out Plan, including the contribution rate schedules according to the Program's defined coverage tiers. Such plan*

options and contribution rate schedules must remain in effect through the entire new Program plan year.

Sec. 20. Notification by a participant of his selection of an Opt-Out Plan must include a signed release and waiver of rights agreement pursuant to subsection 2 of section 10 of this regulation. If the participant is no longer eligible for the Opt-Out Plan, he may take COBRA coverage under the Opt-Out Plan until the next open enrollment period of the Program.

FINANCIAL PROCESS

Sec. 21. 1. Contribution rates for each Group of 300 will be maintained separately in the Program's enrollment and billing informational system.

2. Contribution rates of each Group of 300 must be considered in the same manner as the contribution rates of the Program with respect to any State subsidy.

3. The State subsidy for active employees and retirees shall be calculated in the same manner as for the other participants in the Program.

4. Contribution rates in excess of the calculated State subsidy must be assessed directly to the participant.

Sec. 22. 1. Paycenter billings for active or retired participants of Groups of 300 will be conducted in the following manner:

(a) The Program will bill a paycenter for a Group of 300 that has been identified as such through the enrollment process. These billings will be done at the same time as the Program's billings.

(b) Contribution rates will be billed based upon the contribution rate schedule of each Group of 300.

(c) Paycenters must maintain the different rates for the groups of not less than 300 participants.

2. Direct pay billings for active or retired participants will be conducted in the following manner:

(a) The Program will bill each Group of 300 directly if identified as such through the enrollment process. These billings will be done at the same time as other direct pay billing for the groups of less than 300 participants.

(b) Contribution rates that are billed will be based upon the contribution rate schedule of each Group of 300.

3. Billing for the State retiree's subsidy will be conducted in the following manner:

(a) The Program will account for separately the State retiree's subsidy attributable to the Group of 300.

(b) The State retiree's subsidy will be billed to the Retired Employees' Group Insurance Budget Account on a monthly basis.

Sec. 23. 1. The contribution rate payment to the Program from paycenters for active or retired participants will be conducted in the following manner:

(a) Each paycenter must separately identify the portion of its payment to the Program that is attributable to each Group of 300. These payments must be made at the same time as the paycenter payments for the Program's participants.

(b) Each paycenter must report payment detail for Groups of 300 in the same manner as is done for the Program's participants pursuant to existing procedures established by the Program. This detail is necessary to adequately reconcile the payments with the enrollment records.

(c) The Program will not initiate termination for the nonpayment of premiums by any Group of 300 who is billed through a paycenter. This decision will be the responsibility of the affected Opt-Out Plan upon receiving notice from the Program of the nonpayment.

2. The contribution rate payment to the Program from direct pay for active or retired participants will be conducted in the following manner:

(a) A Group of 300 who is billed directly by the Program will be required to follow the same procedures established for any group of less than 300 participants who is billed directly.

(b) The Program will not initiate termination for nonpayment of premiums by any Group of 300 who is billed directly. This decision will be the responsibility of the affected Opt-Out plan upon receiving notice from the Program of the nonpayment.

3. The State retiree's subsidy will be transferred from the Retired Employees' Group Insurance Budget Account in accordance with the billed amount on a monthly basis, subject to adequate funding in the Retired Employees' Group Insurance Budget Account.

Sec. 24. *1. The Program will establish an administrative fee. The administrative fee must be expressed as a dollar amount per enrolled participant per month.*

2. The administrative fee must be based on the Program's legislatively approved budget less the following:

(a) Health benefit consulting fees.

(b) Fully insured program costs.

(c) Self-funded administrative costs.

(d) Self-funded claim expenses.

(e) Self-funded reserve expenses.

This amount is divided by the total number of participants, regardless of plan, in the 10th month of the current fiscal year then divided by 12 months.

3. The administrative fee must be calculated and communicated to each Opt-Out Plan no later than 60 days before the beginning of each fiscal year.

Sec. 25. *1. The Program will account for all payments actually received from all paycenters and direct-billed participants that are enrolled in any Group of 300.*

2. On a monthly basis, the contribution payments actually received must be remitted to each applicable Group of 300 less the amount of the administrative fee for the premium month's enrollment.

3. Detailed reports must be provided to each affected Group of 300 comprising the participant's payment detail and the administrative fee calculation.

Sec. 26. 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 25, 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, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.