

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

**LCB File No. R097-03**

August 27, 2003

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

AUTHORITY: §§1-25, NRS 287.043 and 287.0479.

**Section 1.** Chapter 287 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 22, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Group” means a group of not less than 300 active state officers or employees or retired state officers or employees, or any combination thereof, who participate in the Program and who apply to leave the Program pursuant to NRS 287.0479.*

**Sec. 4.** *“Opt-out plan” means an alternative plan to provide life, accident or health insurance, or any combination thereof, for a group which is approved by the Board and is secured from:*

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

**Sec. 5.** *A group may apply to leave the Program in accordance with NRS 287.0479 by:*

*1. Providing to the Executive Officer a letter of intent, which states the desire of the group to leave the Program entirely and forego all benefits of the Program; and*

*2. Submitting to the Board a completed application and 15 copies thereof.*

**Sec. 6.** *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.*

**Sec. 7. 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.*

*3. 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. 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. 8.** *In determining whether to grant or deny an application to leave the Program, the Board:*

*1. Shall consider whether:*

*(a) 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;*

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

*(c) 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. May consider:*

*(a) 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;*

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

*(d) Whether the departure of the group is administratively feasible;*

*(e) 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*

*(f) Any other information that the Board deems relevant.*

**Sec. 9. 1.** *A decision of the Board to grant an application to leave the Program will be in writing and will include, without limitation, the effective date of departure of the group from the Program and the dates for completion of any administrative tasks necessary to effect the departure of the group.*

**2.** *If the Board grants the application of a group to leave the Program:*

*(a) The group must, on or before the 25th day of the 8th month of the plan year in which the application is approved, submit to the Board a completed release and waiver of rights agreement, in a form acceptable to the Board, obtained from and signed by each member of the group. Such an agreement must include, without limitation, a description of the circumstances, if any, under which a member of the group, including, without limitation, active and retired members, may return to the Program.*

*(b) A contract, in a form acceptable to the Board, must be executed, on or before the 25th day of the 8th month of the plan year in which the application is approved, between the Program and the proposed opt-out plan of the group. The contract must:*

*(1) Set forth the terms of coverage for the group, provisions for the payment of premiums or contributions of participants to the opt-out plan and such other details necessary to effect departure of the group from the Program.*

*(2) Include, without limitation, provisions regarding the return to the Program of individual members of the group.*

*3. If a group whose application to leave the Program has been approved by the Board fails to comply with the requirements of this section or any provision of the decision of the Board to grant the application of the group by the 25th day of the 8th month of the plan year in which the application of the group was approved, the Board may declare the contract between the Program and the opt-out plan of the group void.*

**Sec. 10.** *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 subsection 1 of section 8 of this regulation;*
- 3. The findings of the Board on any of the optional criteria for review set forth in subsection 2 of section 8 of this regulation 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. 11.** *1. A group whose application to leave the Program has been denied by the Board may file a request for reconsideration with the Board not later than 40 days after the denial. The request may include any additional information that the group determines is*

*relevant to reconsideration. The Board will hold a reconsideration hearing and render its decision within 30 days after receiving the request.*

*2. A petition for review of the denial of an application by the Board may be filed by:*

*(a) An applicant whose application has been denied;*

*(b) The opt-out plan of an applicant whose application has been denied; or*

*(c) Both an applicant whose application has been denied and the opt-out plan of the applicant,*

*in the First Judicial District Court of this state within 30 days after the Board has denied the application or a request for reconsideration, whichever occurs later.*

*3. The filing of a request for reconsideration is not a condition precedent to the rights of the applicant or opt-out plan to petition for review of the denial of an application pursuant to subsection 2. Failure to seek reconsideration by the Board shall not be deemed a failure to exhaust administrative remedies.*

**Sec. 12.** *1. The effective date of departure from the Program of a group whose application has been approved by the Board is the 1st day of the plan year that is at least 120 days after the date on which the Board approves the application.*

*2. The Program shall provide coverage to participants in a group that has been approved by the Board to leave the Program until the effective date of departure of the group from the Program set forth in the decision of the Board granting the application of the group to leave the Program.*

*3. At any time before the effective date of departure of a group from the Program, the group may request the Board to rescind its decision to grant the application of the group.*

**Sec. 13. 1.** *If an officer or employee is eligible to join an opt-out plan at the time of his employment, the officer or employee may elect to join the opt-out plan or the Program upon commencing employment.*

**2.** *If an officer or employee:*

**(a)** *Was eligible to join an opt-out plan at the commencement of his employment but joined the Program; or*

**(b)** *Becomes eligible to join an opt-out plan after the commencement of his employment, the officer or employee may join the opt-out plan in lieu of the Program at an open enrollment.*

**3.** *It is the responsibility of an officer or employee that is eligible to join an opt-out plan or the administrator of the opt-out plan to notify the Program of the eligibility of the officer or employee to join the opt-out plan. Failure to provide such notification to the Program may result in the ineligibility of the employee to select the opt-out plan upon commencement of his employment or at open enrollment.*

**Sec. 14. 1.** *Within 15 calendar days after a change in the status of a participant in an opt-out plan that affects the rate of his premium or contribution, the opt-out plan shall notify the Program of that change in an electronic format acceptable to the Program.*

**2.** *If an officer or employee has declined participation in the Program and any opt-out plan, the officer or employee shall notify the Program within 31 days after the officer or employee has:*

**(a)** *Been ordered to obtain health insurance for his child pursuant to NRS 31A.350; or*

**(b)** *A change in life status or the addition of a dependent that initiates eligibility for both the declined employee and any affected dependent.*



*Sec. 15. 1. The Program shall administer the requirements for eligibility for coverage set forth in this chapter and chapter 287 of NRS for participants in opt-out plans, including, without limitation:*

*(a) Processing notice of termination, workers' compensation leave, military leave, family and medical leave and leave without pay and any related changes that affect coverage.*

*(b) Processing an order for an officer or employee to obtain health insurance for his child pursuant to NRS 31A.350.*

*2. An opt-out plan shall comply with determinations of eligibility made by the Program regarding participants in the opt-out plan.*

*Sec. 16. 1. A participant in an opt-out plan may only join a different opt-out plan or the Program during open enrollment. No lapse in coverage may occur to a participant when he changes coverage pursuant to this subsection.*

*2. When a participant in an opt-out plan retires or becomes a survivor of a deceased officer or employee, the participant may not select another opt-out plan for which he is eligible or the Program until the next open enrollment.*

*3. When an officer or employee joins an opt-out plan, the Program shall not consider that decision to be a declination of coverage.*

*4. If a participant in the Program elects to join an opt-out plan, the participant shall submit to the Program a signed release and waiver of rights agreement, which is in a form acceptable to the Board.*

*5. If a participant in an opt-out plan becomes ineligible for participation in the opt-out plan, he may elect to continue coverage under the opt-out plan pursuant to the Consolidated*

*Omnibus Budget Reconciliation Act, Public Law 99-272, until the next period of open enrollment.*

**Sec. 17.** *At least 90 days before the commencement of a new plan year of an opt-out plan, the opt-out plan shall notify the Program of the options for coverage that will be offered to participants in the opt-out plan during that plan year, including, without limitation, the schedules of the rates for premiums or contributions in accordance with the tiers of coverage established by the Program. Such options for coverage and schedules of rates must remain in effect throughout the entire new plan year.*

**Sec. 18. 1.** *The Program shall maintain the rates for premiums or contributions for participants in each opt-out plan separately in its information system.*

*2. The Program shall calculate the state's share of the costs of premiums or contributions for participants in an opt-out plan pursuant to NRS 287.046 in the same manner as for participants in the Program.*

*3. The difference between the amount of the premium or contribution of a participant in an opt-out plan and the amount paid by the State toward the premium or contribution of the participant pursuant to NRS 287.046 must be assessed to the participant.*

*4. If the amount paid by the State toward the premium or contribution of a participant in an opt-out plan pursuant to NRS 287.046 exceeds the amount of the premium or contribution, the Program shall remit the balance to the opt-out plan.*

**Sec. 19.** *The Program shall bill on a monthly basis:*

*1. Each payroll center that deducts and pays the premium or contribution for a participant in an opt-out plan from the salary or monthly retirement allowance, as applicable, of the participant for the amount of the premiums or contributions for such participants based*

*on the schedule of rates for premiums or contributions for that opt-out plan. A payroll center shall maintain the schedule of rates for each opt-out plan in which persons for whom the payroll center deducts and pays such premiums or contributions participate.*

*2. Each participant in an opt-out plan that is responsible for the paying his premium or contribution directly.*

*3. The Retired Employees' Group Insurance Budget Account for the portion of the amount of the premiums or contributions for participants in an opt-out plan who retired from the service of the State that is paid by the State pursuant to subsection 2 of NRS 287.046. The Program shall identify separately the portion of the amount billed to the State pursuant to this subsection that is attributable to participants in each opt-out plan.*

**Sec. 20.** *1. A payroll center shall remit by the 25th of each month to the Program the amount of the premiums or contributions for participants in opt-out plans that is billed to the payroll center for that month by the Program pursuant to subsection 1 of section 19 of this regulation. The payroll center shall identify separately the portion of each such payment to the Program that is attributable to participants in each opt-out plan.*

*2. A participant of an opt-out plan that is billed directly by the Program pursuant to subsection 2 of section 19 of this regulation for his premiums or contributions shall remit the amount of the premium or contribution within 30 days after he was billed.*

*3. The amount of the premiums or contributions for participants in an opt-out plan for which the Retired Employees' Group Insurance Budget Account is billed each month pursuant to subsection 3 of section 19 of this regulation must be transferred to the Program by the 25th day of each month, subject to adequate funding in that Account.*

*4. The Program shall notify an opt-out plan of the nonpayment of a premium or contribution by a participant in the opt-out plan who is billed by the Program for his premiums or contributions directly or through a payroll center. The Program shall not initiate termination of coverage of such a participant.*

**Sec. 21.** *1. To recoup the administrative costs incurred by the Program related to opt-out plans, the Program shall, for each fiscal year, establish a monthly per capita administrative fee to be charged to each opt-out plan for each participant in the opt-out plan.*

*2. The administrative fee charged to each opt-out plan each month pursuant to subsection 1 must be based on the number of participants in the opt-out plan during that month.*

*3. The per capita administrative fee must be calculated by:*

*(a) Subtracting from the amount of the annual budget of the Program:*

*(1) Consulting fees incurred by the Program for health benefits for participants in the Program;*

*(2) Fully insured costs of the Program;*

*(3) Administrative costs for the plan of self-insurance of the Program;*

*(4) Expenses for claims made by participants in the plan of self-insurance of the Program;*

*(5) Reserve expenses for the plan of self-insurance of the Program; and*

*(6) Any other costs incurred by the Program that the Program deems to be unrelated to participants in opt-out plans.*

*(b) Dividing the number determined pursuant to paragraph (a) by the total number of persons who are participating in the Program or in an opt-out plan during the 10th month of the fiscal year immediately preceding the fiscal year for which the fee is being established.*

*(c) Dividing the number determined pursuant to paragraph (b) by 12.*

*4. The administrative fee must be calculated and provided in writing to each opt-out plan not later than 60 days before the beginning of each fiscal year.*

**Sec. 22. 1. The Program shall:**

*(a) Account for all payments for premiums or contributions for participants in opt-out plans that are actually received each month by the Program pursuant to section 20 of this regulation; and*

*(b) Remit all such payments monthly to the applicable opt-out plan less the amount of the monthly administrative fee charged to the opt-out plan by the Program pursuant to section 21 of this regulation.*

**2. The Program shall provide a monthly report to each opt-out plan, which includes, without limitation, for that month:**

*(a) The details of the payments for premiums or contributions for participants in the opt-out plan; and*

*(b) The calculation of the administrative fee.*

**Sec. 23.** 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 22, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 287.006 to 287.145, inclusive, *and sections 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 24.** NAC 287.085 is hereby amended to read as follows:

287.085 “Open enrollment ” means the annual event ~~offered by the Program~~ in which ~~participants~~ :

1. *Participants* in the Program may change elections offered by the Program concerning coverage and dependents ~~or~~ *or, if eligible, join an opt-out plan.*

2. *Participants in an opt-out plan may join the Program or another opt-out plan for which they are eligible.*

**Sec. 25.** NAC 287.145 is hereby amended to read as follows:

287.145 “Vendor” means an independent contractor pursuant to NRS 284.173 who provides products or services to a program or its participants, including, but not limited to, an insurance broker, a consultant, a claims administrator, an insurer, a health maintenance organization, a physical or mental health care provider, a case management or utilization management company, a dental or vision care provider, a hospital, a medical facility, a certified public accountant, an actuary, a health educator, a pharmacy or pharmacy benefit manager, a preferred provider organization, a publisher and a court reporter. *The term does not include an opt-out plan.*