

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

LCB File No. R016-08

April 30, 2008

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

AUTHORITY: §§1-20, NRS 287.043.

A REGULATION relating to programs for public employees; providing for coverage of domestic partners and their children as dependents; 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 6, inclusive, of this regulation.

Sec. 2. *“Domestic partner” means a person attested to by a participant as being eligible for coverage as a dependent pursuant to section 4 of this regulation.*

Sec. 3. *Except as otherwise provided in NAC 287.312 and section 4 of this regulation, a participant who desires to enroll a person in the Program as a dependent must execute a declaration of enrollment on a form prescribed by the Program, under penalty of perjury and subject to the provisions of NRS 686A.290 and 686A.291.*

Sec. 4. *1. To establish the eligibility of a domestic partner for coverage as a dependent, a participant must sign an affidavit on a form prescribed by the Program, which must include, without limitation:*

(a) Attestations that the participant and the domestic partner:

(1) Are 18 years of age or older and are mentally competent to contract;

(2) Are in a sole committed relationship with one another;

- (3) Are not married to another person;*
- (4) Are not related by blood;*
- (5) Provide each other with mutual support for the necessities of life; and*
- (6) Have shared a residence for not less than 6 consecutive months immediately preceding and including the date on which the participant signs the affidavit; and*
- (b) Statements, to be acknowledged by the participant, that the participant is responsible for:*
 - (1) In the event of the dissolution of the domestic partnership, notifying the Program within 30 days after the dissolution; and*
 - (2) Any federal income tax consequences resulting from the enrollment of the domestic partner in the Program.*
- 2. The participant shall include on the affidavit the address, dates of birth, full names and social security numbers of the participant and the domestic partner.*
- 3. To maintain the eligibility of the domestic partner for coverage as a dependent, the participant must submit an affidavit described in this section during each period of open enrollment if the criteria set forth in paragraph (a) of subsection 1 remain applicable to the domestic partnership.*

Sec. 5. To maintain eligibility for coverage, a dependent must continually reside in the same residence with the participant except for a dependent who is:

- 1. A child who is a full-time student;*
- 2. A child who is the subject of a child health insurance support agreement;*
- 3. A child, spouse or domestic partner who is in a facility for the institutional care of a disability; or*

4. A spouse or domestic partner who is working out of the area of the residence of the participant.

Sec. 6. *Except during a period of open enrollment, the right to change coverage or insurance for a dependent or to add or change dependents is governed by the terms and conditions of any applicable plan, insurance policy or law.*

Sec. 7. 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 6, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 287.0056 to 287.145, inclusive, *and section 2 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 8. NAC 287.035 is hereby amended to read as follows:

287.035 ~~["Dependents"]~~ *"Dependent"* includes ~~[:]~~, *without limitation:*

1. One spouse from a marriage pursuant to law ~~[:and~~
- ~~—2. All other declared members of a declared program coverage unit.]~~ *or one domestic partner; and*
2. *Any child described in NAC 287.312,*
↪ who is determined to be eligible for coverage pursuant to NAC 287.313.

Sec. 9. 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 *surviving* 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.}~~ 4. A ~~{survivor}~~ *surviving dependent* of a deceased retired officer or employee;

~~{6.}~~ 5. 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.}~~ 6. 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.}~~ 7. A biennial employee who plans to return to the same or *a* similar position in the next authorized biennial employment period if the 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.}~~ 8. A former member of the board of trustees of a school district pursuant to NRS 287.024; and

~~{10.}~~ 9. A Legislator whose term of office has not expired.

Sec. 10. 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 the Program or its participants ~~{H}~~ *and dependents*, 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.

Sec. 11. 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 and addresses, by the declarant in a declaration of enrollment of a program coverage unit:~~

~~—(a) A spouse of the declarant.~~

~~—(b)}~~ *persons are eligible for coverage as a dependent if approved pursuant to NAC 287.313:*

(a) Any unmarried child of the ~~{declarant}~~ *participant, his spouse or domestic partner*, who is under the age of 19 years.

~~{(c)}~~ *(b)* Any unmarried child of the ~~{declarant}~~ *participant, his spouse or domestic partner*, 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;

(2) On the 19th birthday of the child, the child is covered by the Program or has received continuous coverage since the child was 18 years of age as a dependent under another group health plan or credible coverage; and

(3) Within 30 days after the 19th birthday of the child, if the child is covered by the Program on the 19th birthday of the child or, if the child is initially enrolled in the Program on

his 19th birthday, within 30 days after the effective date of the child's coverage under the Program, the ~~{declarant}~~ *participant, his spouse or domestic partner*, provides to the Program:

(I) A written statement by a physician who provides care to the child that is prepared within 90 days before provision of the statement to the Program indicating that the child has a mental or physical impairment which causes the child to be incapable of self-sustaining employment and to depend on the ~~{declarant}~~ *participant, his spouse or domestic partner*, primarily for support; and

(II) Any other documentation required by the Program that demonstrates financial support of the child by the ~~{declarant}~~.

~~—(d)~~ *participant, his spouse or domestic partner.*

(c) Any unmarried child of the ~~{declarant}~~ *participant, his spouse or domestic partner*, 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)}~~ (d) Any unmarried child of the ~~{declarant}~~ *participant, his spouse or domestic partner*, 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}~~ *participant, his spouse or domestic partner*, 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.}~~ 2. To determine whether the child of a ~~{declarant}~~ *participant, his spouse or domestic partner*, continues to be eligible for coverage pursuant to paragraph ~~{(e)}~~ *(b)* of subsection ~~{2.}~~ 1, the Executive Officer or his designee may require:

(a) Submission of periodic updates to the documentation provided by the ~~{declarant}~~ *participant, his spouse or domestic partner*, pursuant to subparagraph (3) of paragraph ~~{(e)}~~ *(b)* of subsection ~~{2.}~~ 1; and

(b) Submission of the child to a mental or physical examination conducted by a physician selected by and at the expense of the Program.

~~{4.}—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.~~

~~—5.}~~ 3. Children ~~{declared by the declarant for inclusion in a program coverage unit}~~ *eligible for coverage as a dependent pursuant to this section* may include biological children, adopted children, children placed in the residence of the ~~{declarant}~~ *participant* for adoption, stepchildren and any other child who is related to the ~~{declarant,}~~ *participant, his spouse or domestic partner*, if the ~~{declarant}~~ *participant, his spouse or domestic partner*, is legally responsible for the child and the child is financially dependent on the ~~{declarant and the program coverage unit of the~~

~~declarant~~ *participant, his spouse or domestic partner*, for care and support. A foster child ~~may not be included in a program coverage unit.~~

~~6. Other than a period for enrollment that is open for all participants, the right to change coverage or insurance on a declared dependent or to add or change dependents is governed by the terms and conditions of any applicable plan, insurance policy or law.]~~ *is not eligible for coverage as a dependent.*

Sec. 12. NAC 287.313 is hereby amended to read as follows:

287.313 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. 13. NAC 287.450 is hereby amended to read as follows:

287.450 1. A participating public agency that employs an employee who is on leave without pay shall not pay any amount of the cost of premiums or contributions that is due the Program for group insurance for that employee unless the employee is compensated for a combination of work actually performed and accrued annual leave or sick leave, if the total is at least 80 hours per month for each month that coverage or insurance is provided.

2. An employee who is on approved leave without pay:

(a) May continue coverage or insurance for himself and any of his eligible dependents:

- (1) If the amount of the paycheck of the employee is more than the cost of the premium or contribution, by having the cost of the premium or contribution deducted from his paycheck; or
- (2) If the amount of the paycheck of the employee is less than the cost of the premium or contribution, by paying the cost of the premium or contribution directly to the Program.

(b) Is not eligible for coverage or insurance as a dependent of his spouse *or domestic partner* if his spouse *or domestic partner* is also covered under the Program.

3. If an employee who is on approved leave without pay elects not to pay the premium or contribution for coverage and insurance from the Program and returns to work:

(a) Within 1 year after the last day of his coverage from the Program, the employee is not required to complete 90 days of full-time employment before being eligible to participate in the Program.

(b) One year or more after taking leave without pay, the employee is eligible to participate in the Program on the first day of the month following 90 days of full-time employment.

4. An employee who is on approved leave without pay may, at the time he returns to work, obtain coverage and insurance for any dependent who was previously covered.

Sec. 14. NAC 287.470 is hereby amended to read as follows:

287.470 1. The provisions of this section apply if an overpayment or underpayment of a premium or contribution occurs because of:

- (a) A clerical error by the Program or a participating public agency;
- (b) A change of coverage or a change in the working status of a participating officer or employee; or
- (c) The failure of a participant to give timely notice that ~~his~~ a dependent is ineligible for coverage . ~~[because of his age or because of a change in his status as a student.]~~

2. If a participating public agency makes an overpayment of premiums or contributions, it may deduct the amount of the overpayment from the payment of premiums or contributions otherwise due for the following month. Any such deduction for a period greater than 1 month must:

(a) Be approved in advance by the Program; and

(b) Equal the amount of the overpayment without provision for interest.

3. The participating public agency shall pay any money due a participant because of an overpayment of premiums or contributions.

4. If a participating public agency makes an underpayment of premiums or contributions, it must add the amount of the underpayment to the payment of premiums or contributions otherwise due for the following month. Any such additions for a period greater than 1 month must:

(a) Be approved in advance by the Program; and

(b) Equal the amount of the underpayment without provision for interest.

5. Any money owed by a participant because of an underpayment of premiums or contributions must be collected from the participant and paid by the participating public agency.

6. As used in this section, “overpayment of premiums or contributions” does not include the payment of premiums or contributions for the month in which the employment of a participant terminated, regardless of the date on which the termination occurs.

Sec. 15. NAC 287.530 is hereby amended to read as follows:

287.530 1. If ~~both spouses~~ *the participant and his spouse or domestic partner* are retired officers or employees who retired before July 1, 2004, and elect to participate in the Program, one may elect to be the dependent of the other. A spouse *or a domestic partner* who elected to be the dependent pursuant to this subsection may elect to become a primary insured during open enrollment. If the retired officer or employee designated as the primary insured dies, the spouse *or domestic partner* who elected to be the dependent becomes the primary insured.

2. A person who retires on or after July 1, 2004, and who is eligible to participate in the Program as a primary insured may not elect to be a dependent of his spouse *or domestic partner* who is a primary insured in the Program.

3. A surviving spouse *or domestic partner* who:

(a) Retired before July 1, 2004;

(b) Is enrolled in the Program as a ~~{survivor;}~~ *surviving dependent*; and

(c) Is eligible to participate in the Program as a primary insured,

↪ may elect to change his status to retiree status during open enrollment. A person who chooses such an election pursuant to this subsection must meet the requirements of NAC 287.485 to be eligible for a subsidy.

4. A person who is ~~{the surviving spouse or}~~ a surviving dependent of a deceased officer or employee of a participating public agency, or a deceased retired officer or employee, and who, at the time of his death, was a participant under the Program, may maintain the coverage or insurance from the Program if:

(a) The ~~{spouse or}~~ *surviving* dependent receives retirement benefits from which premiums or contributions can be deducted or such ~~{spouse or}~~ dependent pays the premium or contribution directly to the Program; and

(b) Within 60 days after the date of death of the participant, the surviving ~~{spouse or}~~ dependent:

(1) Notifies the last public employer of the deceased participant that the surviving ~~{spouse or}~~ dependent intends to enroll in or continue coverage by reenrolling in the Program; and

(2) Enrolls or reenrolls, as appropriate, in the Program.

5. Continued coverage provided to a surviving ~~{spouse or}~~ dependent who reenrolls in the Program in accordance with this section may not be changed until the next ~~{enrollment}~~ period ~~{that is open to all participants of the Program.}~~ *of open enrollment.*

6. If the surviving spouse *or domestic partner* has a dependent who is not covered under the Program at the time of death of the officer or employee of a participating public agency, or retired officer or employee, or acquires a dependent by marriage, adoption or birth, the dependent is not eligible for coverage or insurance.

7. A retired officer or employee who wishes to enroll or reenroll in the Program more than 60 days after his official date of retirement or total disability must comply with the requirements of NRS 287.0475.

Sec. 16. NAC 287.660 is hereby amended to read as follows:

287.660 1. A participant ~~{in the Program}~~ may request a review of a claim ~~{he has}~~ submitted *for himself or a dependent* if he feels the claim was not adjudicated pursuant to the current terms and conditions of the Program.

2. The failure to request a review in a timely manner will be deemed to be a waiver of any further right of review or appeal under the Program unless the Program determines that the failure was acceptable.

3. Upon request, the Program may review claims that are the responsibility of an insurer, health maintenance organization or any other risk-bearing vendor which has responsibility for all the processing and payment of claims. A review of claims will be governed by the terms and conditions of the contract between the participant and vendor.

Sec. 17. NAC 287.670 is hereby amended to read as follows:

287.670 1. To initiate a review of a claim, a participant ~~{in the Program}~~ must submit a written request to the Claims Administrator of the Program within 60 days after the date on which the claim was adjudicated or to the insurer in accordance with the terms and conditions of the contract between the participant and the vendor. A request for a review of a claim must include:

- (a) The name of the participant;
- (b) The social security number or member identification number of the participant;
- (c) The identifying number of the claim for benefits;
- (d) A statement indicating whether the claim is for a ~~{public officer or employee, or a retired officer or employee;}~~ **participant** or a **dependent or** surviving ~~{spouse or}~~ dependent of ~~{such an officer or employee;}~~ **the participant;** and

- (e) A statement setting forth the reasons the claim is being contested.

2. The Claims Administrator shall:

(a) Review a request for the review of a claim with the vendors and consultants of the Board to determine if the claim was adjudicated pursuant to the current terms and conditions of the Program under the contract between the Program and applicable vendor; and

(b) Within 30 days after receiving the request for a review, advise the participant in writing of:

- (1) The decision of the Claims Administrator; and
- (2) The specific provision of the applicable plan of the Program used by the Claims Administrator as the basis for the decision.

3. As used in this section, “member identification number” means the number assigned to a participant ~~{in the Program}~~ by the Program.

Sec. 18. NAC 287.115 is hereby repealed.

Sec. 19. On or before June 30, 2009, the Board of the Public Employees' Benefits Program shall determine whether the funding has been approved to carry out the provisions of this regulation. The Board will make a public announcement of its determination pursuant to this section.

Sec. 20. 1. This section and section 19 of this regulation become effective upon filing with the Secretary of State.

2. Sections 1 to 18, inclusive, of this regulation become effective on July 1, 2009, if the Board of the Public Employees' Benefits Program determines pursuant to section 19 of this regulation that the funding has been approved to carry out the provisions of this regulation.

TEXT OF REPEALED SECTION

287.115 "Program coverage unit" defined. (NRS 287.043) "Program coverage unit" means the family unit declared pursuant to NAC 287.312 that seeks coverage or insurance from the Program for more persons than the sole eligible public officer, public employee or retired officer or employee.