

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

**LCB File No. R054-17**

September 12, 2017

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

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

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

**Legislative Counsel's Digest:**

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

**Section 1** of this regulation: (1) provides that the rights of a member to which the Board is authorized to be subrogated pursuant to existing law include the legal liability of an insurer providing first-party coverage to a member; (2) delegates to the Executive Officer the powers of the Board to be subrogated to the rights of a member against certain persons; (3) requires, with limited exceptions, the Executive Officer to apply any money collected from the proceeds of a recovery from an insurer providing first-party coverage to a member to defray the out-of-pocket medical expenses of a member before applying such money to the cost of medical services of the member; (4) authorizes, under certain circumstances, the Executive Officer to collect less than the total cost of the medical services to which the Board is entitled to be subrogated pursuant to existing law; and (5) provides that a decision of the Executive Officer made pursuant to **section 1** is final and not subject to judicial review.

**Section 2** of this regulation: (1) authorizes the Executive Officer to apply the provisions of **section 1** concerning his or her power to be subrogated to the rights of a member with regard to the legal liability of an insurer providing first-party coverage to the member to medical

expenses incurred before the effective date of this regulation; and (2) provides that such a decision by the Executive Officer is final and not subject to judicial review.

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

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

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

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

*(b) In accordance with subsection 3, apply any money collected from the proceeds of a recovery from an insurer providing first-party coverage to a member to defray the out-of-pocket medical expenses of the member before applying such money to the cost of medical services of the member that are payable under the plan of self-insurance.*

*3. Except as otherwise provided in subsection 5, a subrogation lien of the Executive Officer upon the proceeds of any recovery from an insurer providing first-party coverage to a member must be reduced by the applicable in-network or out-of-network out-of-pocket maximum balance of the member remaining at the time of the incident giving rise to the*

*subrogation lien. If the subrogation lien includes medical claims from medical costs resulting from the incident giving rise to the subrogation lien which occurred over multiple plan years, the out-of-pocket maximum balances for each plan year must be used for purposes of reducing the subrogation lien amount.*

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

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

*(a) The plan of self-insurance established by the Board; and*

*(b) Any other health insurance coverage.*

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

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

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

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

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