



Nevada System of Higher Education

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PETITION TO PROVIDE COMPETITIVE & EQUITABLE BENEFITS

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INTRODUCTION

Pursuant to N.A.C. 287.196, on behalf of the Nevada System of Higher Education

Council of Presidents, Presidents David B. Ashley, Richard G. Carpenter, Milton D. Glick, Paul

Killpatrick, Carol A. Lucey, Fred Maryanski, Philip Ringle, and Stephen G. Wells file this Petition with the Executive Officer of the Board of the Public Employees' Benefits Program ("the Board").

In order to recruit and retain talented and highly qualified University and College faculty and staff, we petition the Board to amend N.A.C. 287.312, to provide PEBP benefits to reciprocal beneficiaries¹ of state employees. Such an amendment will also bring the PEBP benefits program into conformity with Nevada's statutory commitment to equality in the workplace. Nevada Revised Statute 281.370 provides, in pertinent part:

1. All personnel actions taken by state, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof must be based solely on merit and fitness.
2. State, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof shall not refuse to hire a person, discharge or bar any person from employment or discriminate against any person in compensation **or in other terms or conditions of employment** because of his race, creed, color, national origin, sex, **sexual orientation**, age, political affiliation or disability, except when based upon a bona fide occupational qualification.
3. As used in this section:
* * *
(b) "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.²

STATUTORY AUTHORITY

This Board has the authority to adopt regulations to classify reciprocal beneficiaries, including reciprocal beneficiaries of faculty and staff employed by the Nevada System of Higher Education, as a qualifying coverage unit under the PEBP. N.R.S. 287.041 establishes the Board as the governing body of the PEBP. N.R.S. 287.043(2)(h) authorizes the Board to adopt such regulations and perform such other duties as are necessary to carry out provisions for group insurance for state officers and employees under N.R.S. 287.0402 – 287.049.

N.R.S. 287.04054 states that the Nevada System of Higher Education is a participating state agency in the PEBP. Under N.R.S. 287.045, professional employees of the Nevada

¹ We are suggesting use of the term, "reciprocal beneficiary," but "adult dependent," "life partner," or "domestic partner" are other possible choices, and this Petition uses these terms interchangeably. Hawaii, the other state that uses the term reciprocal beneficiary, includes within its meaning relationships between close family members such as an unmarried parent and unmarried child or two unmarried siblings. See H.R.S. 572C-2 and 572C-4. However, in this Petition we limit the scope of the term to cover only spouse-like relationships where the two people involved are not closely related by blood.

² N.R.S. 281.370 (emphasis added).

System of Higher Education who have annual employment contracts are eligible to participate in the PEBP.

RESEARCH & DATA SUPPORTING THE PROPOSED AMENDMENT

As Governor Jim Gibbons recently stated “Nevada is blessed with talented and highly qualified employees and we need to maintain excellent benefits to attract and retain these valued employees. Our investment in their benefits program is an investment in our state.”³ Enabling the Nevada System of Higher Education to provide benefits to reciprocal beneficiaries of its faculty and staff is a very important step in our efforts to become or remain competitive with other fine university and college systems.

I. Policies of Other States and Universities

Between 1999 and 2006, the number of colleges and universities offering health benefits to non-married adults in mutually dependent relationships increased from 122 to 290.⁴ Currently, 51% of Fortune 500 companies offer reciprocal beneficiary health insurance benefits.⁵ Our institutions compete for employees with many other universities and colleges, law firms, and private employers in Nevada, the Southwest, and the nation that offer such benefits.

Thirteen (13) states currently offer some type of health insurance coverage for the reciprocal beneficiaries of public employees: California⁶; New Mexico⁷; Montana⁸;

³ NEVADA BUSINESS JOURNAL, March 1, 2007.

⁴ Human Rights Campaign Foundation, *The State of the Workplace 2005-2006* (June 29, 2006), available at http://www.hrc.org/Template.cfm?Section=Work_Life, follow the link to download a PDF version of the report.

⁵ *Id.* at 7.

⁶ California offers health insurance coverage to same-sex domestic partners of state employees. See California Health & Safety Code § 1374.58. California Family Code § 297 defines domestic partners as “two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.”

⁷ Governor Bill Richardson issued an executive order providing that both same-sex and opposite-sex domestic partners of state employees can receive the same benefits as spouses. N.M. Exec. Ord. No. 2003-010 (April 9, 2003).

⁸ In *Snetsinger v. Montana University System*, 104 P.3d 445 (Mont. 2004), the Montana Supreme Court ruled that Montana University's then-current health insurance policy, which offered benefits to unmarried heterosexual couples, but not same-sex couples, violated Montana's equal protection clause. The old system allowed unmarried heterosexuals to sign an affidavit of common-law marriage, but had no such provision for unmarried homosexual couples. In 2005, the University of Montana changed its policy to provide benefits to both same-sex and opposite-sex “adult dependents” of employees.

Washington⁹; Oregon¹⁰; Iowa¹¹; Illinois¹²; Maine¹³; Rhode Island¹⁴; Connecticut¹⁵; New York¹⁶; Vermont¹⁷; and New Jersey.¹⁸ Nevada would become the 14th state, after Illinois, to offer health benefits to employees' reciprocal beneficiaries. Due to the availability of these benefits offered to state employees in these other states, we are at a disadvantage when competing with all the University of California, California State University and California Community College campuses, the University of New Mexico, New Mexico State and the public institutions of Montana, Iowa, Illinois, and much of the Northwest and Northeast.

In addition, we compete for faculty and staff with many other Western universities and colleges that offer health benefits for reciprocal beneficiaries, including the University of Utah; the University of Southern California, the University of Colorado, Denver University, Colorado College, Stanford University, University of the Pacific (Stockton, CA), Colorado College, California Institute of Technology, the University of San Francisco, University of the Redlands,

⁹ Washington provides coverage to employees of state government, higher education, participating K-12 school districts, educational service districts, political subdivisions and employee organizations representing state civil service workers. Same-sex domestic partners of such employees are also covered as dependents of the employee. See Washington State Administrative Code §§ WAC 182-12-11 and WAC 182-12-260. For a copy of the PEBB domestic partner declaration form see page 4 of <http://www.pebb.hca.wa.gov/forms/doc/50-704.pdf>.

¹⁰ Oregon offers medical and dental insurance to both same-sex and opposite-sex domestic partners of state employees. Oregon Administrative Code §§ OAR 101-015-0005 and OAR 101-020-0020. For a copy of the domestic partnership affidavit see <http://pebb.das.state.or.us/DAS/PEBB/> and follow the "forms" link.

¹¹ The State of Iowa offers its ASCME, AFSCME Judicial, PPME, and non-contract employees the ability to insure their same-sex or opposite-sex domestic partner under either or both their state employee health and dental insurance. See http://das.hre.iowa.gov/benefits/benefit_pages/bene_medical.html and http://das.hre.iowa.gov/benefits/benefit_documents/domestic_partner_fact_sheet.pdf. For a copy of the domestic partnership affidavit, see [http://das.hre.iowa.gov/benefits/benefit_forms/domestic%20partner%20affidavit%20\(552-0693\).pdf](http://das.hre.iowa.gov/benefits/benefit_forms/domestic%20partner%20affidavit%20(552-0693).pdf)

¹² Under a Governor's administrative order, effective July 1, 2006, same-sex domestic partners of state employees are afforded the same health benefits as married employees and their dependants. <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=1&RecNum=4837>

¹³ See 24 – M.R.S.A. §§, 2319-A, 2741-A, 2832-A, 4249 (all non-profit hospitals, health insurance contractors, providers, and HMOs must offer domestic partner benefits under the same terms and condition as those provided to spouses), see 24-A M.R.S.A. § 6903 (including domestic partner under the definition of dependent).

¹⁴ Rhode Island offers health benefits to both same-sex and opposite-sex domestic partners of state employees. See Rhode Island Gen. Laws 1956, § 36-12-1.

¹⁵ Connecticut provides health care and pension benefits for same-sex domestic partners of state employees and retirees. See <http://www.osc.state.ct.us/memoarchives3/2000memos/200013.htm>. For a copy of the domestic partnership affidavit form see <http://www.osc.state.ct.us/empret/domestic/index.html> and follow the links to form CO-1049.

¹⁶ In 1995, The Civil Service Employees Association, representing most (but not all) New York State public employees, reached an agreement to include domestic partnership benefits in its new contract.

¹⁷ Vermont provides health and dental coverage to opposite-sex and same-sex domestic partners of state employees. For a copy of Vermont's domestic partner enrollment application for see <http://www.vermontpersonnel.com/employee/pdf/dompartner.pdf>.

¹⁸ Chapter 246 P.L. 2003, effective July 10, 2004, extended public pension and State Health Benefits Program (SHBP) benefits to same-sex domestic partners of state employees. Chapter 103, P.L. 2006, became effective February 19, 2007, and made civil unions available for same-sex couples. Before this, same-sex couples could only enter into domestic partnerships. It is unclear whether or how this will affect SHBP benefits for same-sex partners.

University of Santa Clara, Southwestern School of Law, Pepperdine University, Rice University, Southern Methodist University, Baylor College of Medicine, and the Maricopa County Community College.¹⁹

Public and private employers in Nevada that provide such benefits include the Clark County Unified School District, MGM Mirage, Harrah's Entertainment, Bently Nevada Corporation (Minden), Sierra Health Services Inc. (Las Vegas), WestCare (Las Vegas), Nevada Bell (Reno), Smart City Networks, LP (Las Vegas), Roadmarker Company (Sparks), Auto Diesel Electric (Reno), Tholl Fence Inc. (Sparks), Transit Performance Engineering (Carson City), Skidcar System Inc. (Las Vegas), Nichols Consulting Engineers Chtd (Reno), Pharmacy Supply and Packaging (N. Las Vegas), Pharmacy Support Products (Las Vegas), Electro-Test Inc. (Reno), Environmental Service Consultants Inc. (Reno), and J.A. Thomas Company (Sparks).²⁰

As such benefits become more widespread,²¹ the lack of available reciprocal beneficiary health benefits at our institutions puts us at greater competitive disadvantage. Indeed, the availability of such benefits is now an important signal to potential employees who do not themselves need such benefits.²²

COST ANALYSIS AND ACTUARIAL DATA FROM OTHER STATE AND LOCAL GOVERNMENTS

The cost of providing domestic partner benefits is the primary concern for employers. The two main components of the cost issue are: 1) the financial risks involved in providing for a domestic partner; and (2) the enrollment numbers. In a 2000 study of domestic partner benefits, Hewitt Associates found that employers are no more at risk when adding domestic partners than when adding spouses.²³

¹⁹ Human Rights Campaign Foundation, *The State of the Workplace 2005-2006*, page 48 (June 29, 2006), available at http://www.hrc.org/Template.cfm?Section=Work_Life, follow the link to download a PDF version of the report.

²⁰ Human Rights Campaign Foundation, *The State of the Workplace 2005-2006* (June 29, 2006), available at http://www.hrc.org/Template.cfm?Section=Work_Life, follow the link to download a PDF version of the report.

²¹ This movement is in private industry, state and local government, and potentially at the federal level. In September 2006, Senator Joe Lieberman (I-CT) introduced Senate Bill 3955 known as the "Domestic Partnership Benefits and Obligations Act of 2006" to require the federal government to offer health, dental, vision, and retirement benefits to domestic partners of federal employees

²² See generally RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS*.

²³ See *Domestic Partner Benefits: Facts and Background*, Employment Benefits Research Institute (March 2004), available at <http://www.ebri.org/pdf/publications/facts/0304fact.pdf> The costs of domestic partner coverage were lower than anticipated because: (1) the employees eligible for domestic partner coverage tended to be young, and, as

In a 1994 study, Hewitt Associates found that employers who limited enrollment to same-sex couples reported a lower enrollment rate than employers who extended benefits to opposite-sex unmarried couples (overall, 67 percent of new enrollment came from opposite-sex couples).²⁴ A 2000 study found that on average 1.2 percent of eligible employees offered domestic partner coverage in the health plan actually elected to take it – far fewer than the anticipated rate of 10 percent, due to the fact that most reciprocal beneficiaries already have coverage through their own employers.²⁵

In 1995, the state of New York began offering medical, dental and vision benefits to both same-sex and opposite-sex reciprocal beneficiaries of state employees. Eligible employees could enroll their reciprocal beneficiaries by signing an affidavit. By 1998, only 0.94% (1,842 out of 195,000) state employees had enrolled such a beneficiary. Of those 1,842 employees, 78% had enrolled an opposite-sex partner and only 22% had enrolled a same-sex partner. The cost of providing benefits for these beneficiaries made up 0.24% of the total benefits cost for that year.²⁶

When the state of Minnesota provided reciprocal beneficiary health benefits to state employees, the Minnesota Department of Employee Relations reported that the increase in cost in 2002 was only 0.05% in state employee health care costs (\$189,000 - out of a total health care budget of \$331 million). Julien Carter, Commissioner of the Department of Employee Relations, stated that if the value of these benefits "were redistributed to each state employee in the form of wages, they would represent approximately .002 cents per hour" (4 cents per year).²⁷

a result, healthy; (2) any increased risk of AIDS among male same-sex couples was offset by a decreased risk among female same-sex couples; and (3) same-sex domestic partners have a very low risk of pregnancy.

²⁴ <http://www.ebri.org/pdf/publications/facts/0304fact.pdf>

²⁵ <http://www.ebri.org/pdf/publications/facts/0304fact.pdf>

²⁶ Human Rights Campaign Foundation, *The State of the Workplace 2005-2006*, page 48 (June 29, 2006), available at http://www.hrc.org/Template.cfm?Section=Work_Life, follow the link to download a PDF version of the report.

²⁷ In 2001, during contract negotiations with state employees, the state decided to provide reciprocal beneficiaries to state employees. In 2003, the Republican majority in the Minnesota State House of Representatives refused to ratify the contracts, thereby revoking the benefits. The State Senate is currently examining a bill that would allow same-sex partners of state employees to buy into the state's health insurance plan. See <http://minnesota.publicradio.org/display/web/2007/03/24/samesex>. Quote taken from the April 16, 2002, letter from Julien Carter, Commissioner of Department of Employee Relations, to House Speaker Steven A. Sviggum, also available at <http://www.aclu.org/lgbt/relationships/20306res20050713.html>

In 1990, the city of Corvallis, Oregon began offering benefits to both same-sex and opposite-sex reciprocal beneficiaries of city employees. The city offered medical, dental and vision benefits as well as dependent life insurance, adoption assistance, bereavement, sick leave, EAP and COBRA. By 1998, 2.45% (9 out of 372) employees had enrolled a reciprocal beneficiary. Six of the 9 employees had enrolled an opposite-sex partner and 3 had enrolled a same-sex partner. The cost for these benefits comprised 0.82% of the total benefits cost.²⁸

Due to the marginal increase in budget, most state, municipal and private employers did not track the specific cost of adding such benefits. Although data from other states and cities that keep such records show the overall cost to be quite low, it may in fact be lower than the numbers indicate. In Nevada, some of the cost associated with extending PEBP benefits to reciprocal beneficiaries of Nevada state employees may be offset by a reduction in the number of people enrolled in other state-sponsored health care plans such as Medicaid²⁹ and Nevada Check-Up.³⁰

PROPOSED LANGUAGE OF AMENDMENTS & ADDITIONS

We propose a reciprocal beneficiary benefit plan that borrows from the University of Montana adult dependent program and a similar benefits plan currently offered by Clark County School District Teachers Health Trust.³¹ The Clark County School District Teachers Health Trust employee benefits handbook³² defines domestic partners as “two adults of the same or opposite sex, each of whom is at least 18 years old, who

- maintain or share a primary residence; and
- are jointly responsible to each other for basic living expenses; and
- are not blood relatives any closer than would prohibit legal marriage in the state of residence; and
- are not legally married to anyone else; and

²⁸ Human Rights Campaign Foundation, *The State of the Workplace 2005-2006*, page 48 (June 29, 2006), available at http://www.hrc.org/Template.cfm?Section=Work_Life, follow the link to download a PDF version of the report.

²⁹ Nevada Medicaid provides medical assistance for certain individuals and families with low incomes and resources, and people with disabilities. It is a jointly funded cooperative venture with the federal government. See <http://dhcfp.state.nv.us/>

³⁰ Nevada Check-Up is the State of Nevada’s Children’s Health Insurance Program and provides low-cost health care to low-income, uninsured children who are not eligible for Medicaid or covered by private insurance. See <http://nevadacheckup.state.nv.us/>

³¹ Our proposal is a sample of the type of program for which we are petitioning. We have included references to a variety of similar benefits programs from several other states in order to provide the PEBP Board with a variety of formulations to consider.

³² Copy available at https://teachershealthtrust.org/QNXTView/Website/04-11-06%20Final%20SPD_01.pdf, see pages 18-19 of the handbook.

- have not had another Domestic Partner enrolled in the Trust in the past six months (except in the case of death).

In order to enroll such a beneficiary, the employee must show proof of the relationship by submitting a notarized Declaration of Domestic Partnership form, and must designate in writing that the Domestic Partner is a primary beneficiary of at least 50% of the term life insurance provided to the employee through the Trust.³³

N.A.C. 287.312 currently sets forth a list of “eligible dependents” within “qualifying program coverage units.” The list of eligible dependents includes spouses (sub-clause “(a)”); all unmarried children under the age of 19 (“(b)”); unmarried children age 19 or older incapable of caring for themselves because of mental or physical disability (“(c)”); unmarried children age 19 to 24 who are full-time students (“(d)”); or unmarried children age 24 or older who became disabled when full-time students under the age of 24 (“(e)”).

The category of “Reciprocal Beneficiary” can be added to the list of qualifying program coverage units as a new sub-clause “f” under N.A.C. 287.312(2) in the following manner:

- (f) *A reciprocal beneficiary of the declarant if the declarant and such person:*
1. *maintain or share a primary residence;*
 2. *are jointly responsible to each other for basic living expenses;*
 3. *have been in this relationship of mutual responsibility and benefit for at least six months;*³⁴
 4. *are not blood relatives any closer than would prohibit legal marriage in the state of residence;*
 5. *are not legally married to anyone else; and*
 6. *have not had another Domestic Partner enrolled in the PEBP in the past six months (except in the case of death).*³⁵

In addition, conforming amendments would be required for N.A.C. 287.312(3), to amend the following sentences to read:

3. All declared members of a program coverage unit must continually reside in the same residence with the declarant except for a dependent who is:
 - (a) A child who is a full time student;
 - (b) A child or a spouse *or a reciprocal beneficiary* 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 *or reciprocal beneficiary* who is working out of the area of the residence of the declarant;[.]

³³ *Id.* at page 20.

³⁴ This requirement was borrowed from the Montana University System Requirement for Adult Dependents. See <http://www.umt.edu/hrs/forms/DeclarationAdultDep.doc>

³⁵ The Montana University System Requirement for Adult Dependents also includes certification of a “close personal relationship.” See <http://www.umt.edu/hrs/forms/DeclarationAdultDep.doc>

The Board could also adopt some type of Reciprocal Beneficiary Declaration form and a standard of proof for such relationships, or leave that level of implementation to various units covered by these regulations.

CONCLUSION

Each of us is committed to providing Nevada with the finest possible institutions of higher education. Recruiting and retaining the best possible faculty and staff is crucial to realizing that commitment. The lack of reciprocal beneficiary benefits is a growing obstacle to our recruitment and retention efforts. This is a problem that can be fixed. Offering reciprocal beneficiary benefits will be a highly cost-effective measure to enable us to compete more successfully in the region and the nation.

RESPECTFULLY SUBMITTED,

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