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Final Regulation Agency Background Document

Agency name	The Department of Human Resource Management
Virginia Administrative Code (VAC) citation	1VAC 55-20
Regulation title	Commonwealth of Virginia Health Benefit Program
Action title	Amends current regulations so that they comply with state and federal law
Document preparation date	January 12, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

Enter statement here

1 VAC 55-20 regulates the administration of the health benefit plans offered to state employees and employees of local municipalities who provide health benefit coverage through The Local Choice (TLC) program. The purpose of these final regulations is to reflect changes made to the Code of Virginia as well as federal laws and regulations which are applicable to the state and TLC program. Additionally, changes have been made to reflect current administrative practices.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

Enter statement here

I hereby approve the foregoing Regulatory Review Summary, and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Sara R. Wilson
Director of the Department of Human Resource Management

The Director of the Department of Human Resource Management pursuant to §2.2-2818 of the Code of Virginia adopted this as a final regulation on February 26, 2004.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Enter statement here

Code of Virginia

§ 2.2-2818 of the Code of Virginia authorizes the Department of Human Resource Management (DHRM) to establish a plan for providing health benefits to state employees .

§ 2.2-1204 authorizes DHRM to establish a plan for providing health benefits to employees of local municipalities.

2.2-2818(A) changes the name from the Department of Personnel and Training to the Department of Human Resource Management.

§ 2.2-2818(B)(4) establishes an appeals process utilizing an impartial health entity.

§2.2-2818(O) provides for a 30-day continuation of coverage in the active State Health Benefits Plan for surviving family members.

§ 2.2-2819. allows the purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired state employee who were covered under the plan on the date of the deceased’s death.

§ 2.2-2675 eliminates the authority of the Health Benefits Advisory Council and the Local Advisory Council. Establishes the Virginia Council on Human Resources.

§ 23-50.16:24 established MCV as an Authority. MCV employees are no longer eligible for the state health benefits plan.

United States Code

- 29USC § 1181 HIPAA, Portability, Certification of Prior Coverage provisions
- 29USC § 1182 HIPAA, Prohibiting Discrimination based on an individual’s health status
- 26USC § 125 Cafeteria Plan rules

These final regulations differ from the proposed regulations (Sections 1VAC55-20 160 (D); 1VAC55-20-370 (B); 1VAC55-20-38-(F)(3), 1VAC55-20-380 (F)(4); and 1VAC55-20-390 (B)(1c) have been modified) and as such have been review by the office of the Attorney General. That office has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Enter statement here

The purpose of these amendments is to bring 1 VAC55-20 into compliance with legislation that has been passed on the state and federal level and to reflect current plan administrative practices. The State Employee Health Benefits Program is now required by the Code of Virginia to incorporate an independent medical review program. The Code has changed the name of the Department of Personnel and Training to the Department of Human Resource Management; and the Code has extended active coverage for surviving spouses of employees. Legislation has been passed which removes authority for a Health Benefits Advisory Council and a Local Advisory Council

On the federal level, the Health Insurance Portability and Accountability Act (HIPAA) has required the plan to change the way it sets coverage effective dates. HIPAA has caused the plan to eliminate any pre-existing condition or evidence of insurability provisions. IRS section 125 regulations now require plan participants to make plan election changes on a prospective basis.

The administration of the program is moving into the electronic age. The plan now uses electronic enrollment over the web, so the regulations need to reflect this paperless method of administration.

Finally, there is a need to clarify some of the plan's administrative procedures, as they have been refined over the years.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Enter statement here

It has been many years since these regulations have been updated. Since that time there have been numerous laws passed, both at the state and federal levels, which change the way the state health benefits plan operates. Additionally, the Commonwealth is moving into the electronic age and many of the terms used for the enrollment process have become antiquated.

At the federal level the Health Insurance Portability and Accountability Act (HIPAA) and the final regulations to IRS Code §125 have had a major impact on the administration of the state's health benefit plan. HIPAA requires that health benefit plans offer special enrollment rights to plan members, forbids discrimination based on an individual's health status, severely restricts the administration of any pre-existing condition provision and requires the plan to send out certificates of creditable coverage to all plan members who terminate coverage. The final IRS Code §125 regulations have clarified when and how an enrollee may change coverage and membership levels under a §125 premium conversion plan. In doing so they have updated the change in status rules and added a section on cost and coverage provisions.

At the state level, the Code of Virginia changed the name of the Department of Personnel and Training to the Department of Human Resource Management. The State Health Benefits Plan was required to offer continuation coverage to certain surviving family members of state employees along with continuing their active coverage for a period of 30 days from the end of the month following the employee's death. The office of the Ombudsman was created in conjunction with provisions for an independent health entity. Both of these resources were established to provide employees with a vehicle to assist them with claim problems. The Virginia Council on Human Resources was established, eliminating the need for the Health Benefits Advisory Council and the Local Advisory Council. The Medical College of Virginia was made an Authority, making new MCV employees ineligible for the state health benefits plan.

Currently the Department has 90 days to provide the initial documentation of an adverse experience adjustment to a local municipality leaving The Local Choice program. The final regulations change this to six months. The reason for this change is that 90 days does not provide sufficient time for DHRM's finance department to obtain the claim experience from the state's third party administrator, calculate the adverse experience adjustment and send it to the terminating employer. Extending this period from 90 days to six months should produce more accurate initial statements and provide enough time so that only smaller adjustments (if any) need to be made during the 12 month claim run out period.

Emergency regulations were adopted late last year which reduced the number of hours (from 40 to 32) an employee had to work to be eligible for benefits as a full-time employee. These final regulations incorporated this change.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

Enter statement here

These changes will allow the regulations to reflect current plan administrative practices and are necessary to make the plan compliant with state and federal law. With the exception of IRS Code 125 which restricts when an employee may enroll in the plan, these changes to the regulation generally provide employees with greater freedom and rights.

Except for the restrictions placed on employee enrollment and membership changes (noted above) there will be no disadvantages to the general public, or employees of the Commonwealth, due the implementation of these regulations.

Local municipalities leaving The Local Choice program will now have additional time to pay any adverse experience adjustment.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

The following changes were made to the proposed regulations since initial publications.

EXPLANATION OF SUBSTANTIVE CHANGES

*1VAC55-20-160 (D) When a group in The Local Choice program leaves the plan and claims from the previous year exceed premium paid during the period, the group is required to pay the deficit based on an adverse experience adjustment calculated by DHRM. Currently regulations require DHRM to calculate the initial adverse experience adjustment for such groups within 90 days. Claim run-out (processing of claims incurred but not received by the claim administrator) is typically 90 days. DHRM requires an additional 90 days following the end of the run-out period to obtain claim experience from the state's third party administrator, calculate the adverse experience adjustment, and forward it to the terminating employer, for a total of 180 days required to provide accurate initial statements. This revision increases from 90 to 180 days the amount of time for DHRM to provide the initial adverse experience statement, resulting in more accurate initial statements and reducing the need for subsequent adjustments.

*1VAC55-20-370 (B) Removed the provision that coverage will not be available to a new employee unless the employee is on the payroll for a minimum of 16 calendar days. DHRM believes that these practices are in violation to IRS Section 125 and COBRA.

*1VAC55-20-380 (F) (3) Currently the regulations require an employee who is on military leave for less than six months to re-enroll in the same plan of benefits that he or she was enrolled in prior to being placed into active service. The final regulations change this timeframe from six months to 30 days. IRS Section 125 now provides for a 30-day safe harbor.

*1VAC55-20-380 (F)(4) The Department's proposed regulations changed the language in this section to read: "Employees who reside outside of the United States will not be eligible for coverage under the State Health Benefits Program if they are also eligible for national health care from the country in which they are residing. Upon their return to the United States these employees must apply for coverage within 31 days." Affected agencies state that they have made a commitment to their employees who live outside of the country to provide state health benefits and that it is part of their compensation package. They feel that it is important that all employees have the opportunity to choose from the same set of benefits. They state that the proposed legislation would mean a decrease in total compensation (salary and benefits) for those affected employees. Based on this feedback the Department is rescinding the original changes to this section. Section 1VAC55-20-380 (F)(4) of the current regulation was deleted in its entirety because, without the above change, it had become redundant.

*1VAC55-20-390 (B)(1c) Change 31 days to 60 days. Currently, per the Code of Virginia, non-annuitant survivors of state employees have 60 days to elect continued participation in the state health benefits plan. Per plan practice, annuitant survivors were given 31 days to elect continued participation. Allowing the 60-day election period makes the election period consistent for all eligible surviving family members, annuitant or non-annuitant.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

Enter any other statement here

1VAC55-20-160 (D) T. J. Clayton, Director of Finance, DHRM

Mr. Clayton suggested that the time period required to provide an adverse experience adjustment to municipalities who terminate participation from The Local Choice program be changed from 90 days to six months. He stated that 90 days does not provide sufficient time for DHRM’s finance department to obtain the experience from the state’s third party administrator, calculate the adverse experience adjustment, and send it to the terminating employer. Extending this period from 90 days to six months should provide enough time to produce more accurate initial statements, and reduce the need for additional adjustments during the 12 month claim run out period.

The section was changed to reflect Mr. Clayton’s suggestion.

1VAC55-20-380 (F)(4)

Paul W. Timmreck, Senior Vice President for Finance and Administration, Virginia Commonwealth University

Karen E. Jackson, Director, The Department of Agriculture and Consumer Services

Both of these individuals requested that the department rescind its decision to exclude employees from participating in the State Health Benefits Plan if the individual was eligible for national health care. These agencies stated that they have made a commitment to their employees who live outside of the country, regardless of national origin, to provide state health benefits and that these benefits are a part of their compensation package. They feel that it is important that all employees have the opportunity to choose from the same set of benefits. They think that the proposed legislation would mean a decrease in total compensation (salary and benefits) for those affected employees. Based on this feedback, the department is rescinding the original changes to this section. Section 1VAC55-20-380 (F)(4) of the current regulation was deleted in its entirety, because without the above change it had become redundant.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

Enter any other statement here

1VAC55-20-10 This section changes the name of the agency from The Department of Personnel and Training (DPT) to The Department of Human Resource Management (DHRM).

1VAC55-20-20 This section clarifies definitions. It defines the terms used when an employee makes a change in the health benefits plan through the Internet (“enrollment action”). It eliminates the definition for Local Advisory Committee. It defines an impartial health entity. It restates the definition of state employee and moves other covered employees to section 1VAC55-20-320.

1VAC55-20-30 Changes DPT to DHRM

1VAC55-20-40 Changes Health Benefits Advisory Council to Human Resource Advisory Council. This was required due to a change in the Code of Virginia

1VAC55-20-50 Eliminates the Local Advisory Council. The Code of Virginia eliminated the Local Advisory Council

1VAC55-20-80 Clarifies this section as it relates to § 2.2-2818 (C) of the Code of Virginia

1VAC55-20-90 Sets standards that an independent health entity must meet before it is selected by the state health benefits program to perform independent medical reviews of denied claims.

1VAC55-20-130 Clarifies the department’s rights and resources.

1VAC55-20-160 Clarifies the original regulations.

1VAC55-20-160 (D) Changed 90 days to six months. 90 days does not provide sufficient time for DHRM’s finance department to obtain the claim experience from the state’s third party administrator, calculate the adverse experience adjustment, and send it to the terminating employer. Extending this period from 90 days to six months should provide enough time to

produce more accurate initial statements, and reduce the need for additional adjustments during the 12 month claim run out period.

1VAC55-20-210 Clarifies the original regulations. Broadens methods of enrollment to include electronic means. Eliminates the restriction on how far back the Plan can go to recover claim payments made on behalf of ineligible individuals. Removes the requirement that the plan must return employee contributions made to the plan, when it is discovered that the employee or other plan member was not eligible for coverage. Clarifies that the removal of an ineligible dependent is not an event which allows a reduction in membership.

1VAC55-20-230 Removes the evidence of insurability option as required by HIPAA. Provides administrative guidance to local employers choosing to offer retiree medical.

1VAC55-20-240 Clarifies the original regulations, and the administration of COBRA participants, as they relate to premium payments. Conform regulations to IRS Code section 125, that is, elections must be made on a prospective basis.

1VAC55-20-260 Clarifies the original regulations removing outdated examples.

1VAC55-20-280 Allows local school boards to have an October 1 through September 31 plan year.

1VAC55-20-290 Permits the plan to allow local employers, who have left TLC and remained away from the plan for more than three years, to rejoin the plan on a date other than the TLC group's anniversary date.

1VAC55-20-320 Emergency regulations were adopted late last year which reduced the number of hours (from 40 to 32) an employee had to work to be eligible for benefits as a full-time employee. These section incorporated this change. Additionally, this section clarifies who is an eligible employee or dependent. It also defines which employees at MCV are eligible to participate in the program per § 23-50.16:24 of the Code of Virginia.

1VAC55-20-330 This section adds the term "enrollment action" to allow for web based enrollments. Additionally, it reflects IRS 125 rules requiring that elections be made on a prospective basis except for those enrollments which must be effective on the date of the event (birth, adoption or placement for an adoption) which are mandated by HIPAA and exempted from the 125 prospective rules.

1VAC55-20-340 This section clarifies the current administrative practices for retirees to have their premium payroll deducted through their pension check. Local employers collect retiree premiums and remit them with the premium submitted for active employees.

1VAC55-20-350 This section is updated to comply with IRS section 125. It defines when a participant can make membership changes.

1VAC55-20-360 This section includes early retirees in the open enrollment process. It specifies that participants must live or work in a HMO service area. It also includes the term enrollment action for web based enrollment.

1VAC55-20-370 This section is updated to comply with IRS's section 125 requirement that plan and membership elections must be made on a prospective basis. It also includes the term enrollment action for web based enrollment.

1VAC55-20-370 (B) This strikes the provisions that coverage will not be available to the new employee unless the employee is on the payroll for a minimum of 16 calendar days and that these employees who work less than 16 days will have any premiums refunded and any claims retracted. DHRM believes that these practices are in violation to IRS Section 125 and COBRA.

1VAC55-20-380 This section is updated to conform the state's leave without pay policies to conform to IRS section 125. It includes the term enrollment action for web based enrollment. It adds regulations surrounding the Virginia Sickness and Disability Plan.

1VAC55-20-380 (F) (3) Change six months to 30 days. IRS Section 125 now provides for a 30 day safe harbor.

1VAC55-20-380 (F)(4) The department's proposed regulations changed the language in this section to read: Employees who reside outside of the United States will not be eligible for coverage under the state health benefits program if they are also eligible for national health care from the country in which they are residing. Upon the return to the United States these employees must apply for coverage within 31 days. Affected agencies state that they have made a commitment to their employees, who live outside of the country, to provide state health benefits and that it is part of their compensation package. They feel that it is important that all employees have the opportunity to choose from the same set of benefits. They state that the proposed legislation would mean a decrease in total compensation (salary and benefits) for those affected employees. Based on this feedback, the department is rescinding the original changes to this section. Section 1VAC55-20-380 (F)(4) of the current regulation was deleted in its entirety, because without the above change it had become redundant.

1VAC55-20-390 This section provides for the 30-day extension of active coverage for surviving family members of state employees as required by the Code of Virginia. It also gives guidance concerning continued eligibility in the program for surviving spouses of active state and retired employees.

1VAC55-20-390 (B)(1c) Change 31 days to 60 days. Per the Code of Virginia, covered non-annuitant survivors are given 60 days from the date of the deceased's death to elect continuing health benefit coverage under the state plan. Allowing the 60-day election period makes the election period consistent for all eligible surviving family members, annuitant or non-annuitant.

1VAC55-20-400 This section conforms to the HIPAA requirement that certificates of coverage are given at the time coverage in the program is terminated.

1VAC55-20-410 This section changes from three months to 60 days to reflect the current contractual provisions of the state's HMO contracts. Additionally, it removes the reference to waiting period, which is no longer applicable under the terms of the state health benefits plan.

1VAC55-20-420 This section has been removed since HIPAA no longer allows these types of restrictions to be placed on health benefit plans.

1VAC55-20-430 This section has been modified to make it conform to the Coordination of Benefits language recommended by the National Health Insurance Commissioners model language.

1VAC55-20-450 This section has been modified to clarify the type of plan and funding of benefits authorized by the Code of Virginia,

1VAC55-20-460 Clarifies the circumstances in which retirees are eligible to participate in the state health benefit plans, i.e., within 31 days of separation for retirement

1VAC55-20-480 This section updates the forms currently being used by the plan.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Enter statement here: These regulations will not have any negative effects on the institution of the family or family stability. They will not erode the marital commitment and will not discourage economic self-sufficiency, self-pride or the assumption of family responsibility. They will have no effect on disposable family income.