

Virginia
Regulatory
Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	The Department of Human Resource Management
VAC Chapter Number:	1 VAC 55-20
Regulation Title:	Commonwealth of Virginia Health Benefits Program
Action Title:	Amends current regulations so that they comply with state and federal law
Date:	November 22, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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. These proposed regulations reflect changes made to the Code of Virginia as well as federal laws and regulations which are applicable to the state and TLC program.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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 spouses.

§ 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.

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

§ 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

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

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. 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. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

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 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 surviving spouses of state employees along with continuing such coverage for a period of 30 days following the employee’s death. The office of the Ombudsman was created in conjunction with provisions for an independent health entity. Both of these were established to provide employees with a vehicle to assist them with claim problems. The Human Resource Council 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 MCV employees ineligible for the state health benefits plan.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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 include a sentence to that effect.

The 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.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency’s best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

None

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

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.

1VAC55-20-50

Eliminates the local advisory council

1VAC55-20-80

Clarifies this section as it relates to § 2.1-20.1 (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.

1VAC55-20-210

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. 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

Clarifies who is an eligible employee or dependent. This section has been changed reducing the required number of hours an employee must work to be eligible for health benefits, from 40 to 32 hours per week. 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.

1VAC55-20-360

This section includes early retirees in the open enrollment process. 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 section 125. It also includes the term enrollment action for web based enrollment.

1VAC55-20-380

This section is updated to comply with IRS section 125. It includes the term enrollment action for web based enrollment. It adds regulations surrounding the Virginia Sickness and Disability Plan. Additionally, this section clarifies that individuals who live outside of the United States, and also have national health care from that country, are not eligible to participate in coverage offered through the DHRM

1VAC55-20-390

This section provides for the 30-day extension of active coverage for surviving spouses of state employees. It also gives guidance concerning continued eligibility in the program for surviving spouses of active state and retired employees.

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 found in the employee handbook. The employee handbook follows 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.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

These changes are necessitated by law, and will bring the plan into alignment with common administrative practices.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

There were no public comments made during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DHRM has examined these regulations and, in so far as possible, has ensured that they are clearly and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DHRM conducts ongoing monitoring of the plans activities as well as state and federal legislation. These regulations will be reviewed on an annual basis to determine if the regulations should be continued, amended or terminated.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulations will not have any negative effects on the institution of the family of family stability. They will not erode the martial commitment and will not discourage economic self-sufficiency, self-pride or the assumption of family responsibility. They will have not an effect on disposable family income.