

February 26, 2023

To: Teri Rasmussen, Program Coordinator
Health Plan Administration, Division of Retirement and Benefits

From: Wendy Woolf
RPEA Representative, RHPAB Regulations Subcommittee

Re: Comments on Proposed Changes in the Regulations of the Department of Administration,
Division of Retirement and Benefits, Published December 19, 2022

Thank you for the opportunity to comment on the Proposed Changes in the Regulations of the Department of Administration (DOA), Division of Retirement and Benefits (DRB), put out for public notice on December 19, 2022. The Retired Public Employees of Alaska (RPEA) has several concerns with the proposed regulations as drafted. The RPEA Executive Board reviewed and discussed the proposed regulations and concurs with these comments.

The RPEA settled its litigation with the State largely based on the promise that DRB would draft regulations that encapsulate the full process DRB uses for evaluating proposed changes to the retiree health plans.¹ In other words, regulations that capture all of the essential features of the current process. This is because, in the absence of Administrative Order (AO) 336 creating the Retiree Health Plan Advisory Board (RHPAB), it is critical to RPEA that the role that the RHPAB currently plays continue through regulation.

The essential feature of the current process is that ***DRB works with the RHPAB to develop, evaluate, and prioritize proposed plan changes.***² In the absence of the RHPAB, the settlement clearly contemplated that the DRB will work with a stakeholder group when proposing plan changes. Emily Ricci, former Chief Health Administrator with DRB, outlined the current process DRB uses when developing, evaluating, and prioritizing proposed plan changes. It was this process that RPEA expected to be reflected in the proposed regulations. This was explicitly discussed during mediation and captured in the final offer for settlement.

The process provided by Ms. Ricci during mediation was described as follows:

- The Division meets regularly with the RHPAB. The board consists of seven members, including:
 - Chair, TRS retiree
 - Vice-Chair, PERS retiree
 - 2 additional PERS retirees
 - 1 ARM Board member

¹ RPEA v. State of Alaska, Settlement Agreement, 3AN-18-06722 CI / 3AN-16-04537 CI, page 4.

² RPEA's Memorandum Related to the Medical Diminishment Case, February 9, 2022, pages 3 – 4; and the State's Offer during mediation, dated February 11, 2022.

- 1 Human Resources Officer
- 1 Public Member
- Board meetings are recorded and placed online along with meeting materials.
- **The Division meets with the board to review priorities and items for evaluation.**
- **Division staff develops proposals which include the following considerations:**
 - **Background, objective, and summary of proposed changes**
 - **Member impact**
 - **Actuarial impact**
 - **Financial impact, and**
 - **Operational impact (both to Division and Third-Party Administrators).**
- The proposals evolve over many iterations.
- **The proposals are available for a reasonable public comment period, which is shared with the board/committee.**
- **When proposals are complete, the board/committee develops a resolution and takes an advisory vote.**
- This, along with the Division's recommendation is shared with the Commissioner of Administration for final decision.
- **DRB publishes proposed changes with a reasonable comment period. (Emphasis added)**

Missing from the proposed regulations are a stakeholder working group, that role which is now fulfilled by the RHPAB. The proposed regulations need to include the complete process DRB uses to develop, evaluate, and prioritize proposed plan changes, which includes working with the RHPAB. In the absence of AO 336 creating the RHPAB, DRB needs to work with a stakeholder group, whose membership is defined in these regulations. This public process for developing proposed plan changes has been beneficial to the DRB and the retirees. It has allowed the DRB to hear stakeholders concerns and address them well before implementing any plan changes.

RPEA understands that the regulations cannot be tied to the AO 336 creating the RHPAB; however, a stakeholder working group can be defined in these proposed regulations. The working group or stakeholder committee should mirror the composition of the RHPAB created through AO 336. If AO 336 is repealed, the regulations will have defined the stakeholder committee as the body DRB will work with when developing, evaluating, and prioritizing proposed plan changes. (See pages 1 and 2, Attachment 2.)

The process to change health plan benefits should only be included in one section of the regulations. The regulations can be written with the process to make changes to the retiree health plan benefits as its own Article. The new Article can reference both the dental-vision-audio insurance coverage and the major medical insurance coverage. The process to make changes to the health plan benefits described in 2 AAC 39.280 and 2 AAC 39.390 is the same. It is confusing to have the same process duplicated in two separate regulations in two different Articles of Chapter 2 AAC 39. (See Attachments 1 and 2 for a proposed new Article 4, Changes to Health Plan Coverage.)

Under 2 AAC 39.280(c)(2) and 2 AAC 39.390(c)(2), in the public notice for the proposed amendment to plan booklet, in addition to “(A) a summary of the proposed amendment”, the notice should include a redline comparison of the proposed change with the existing plan booklet language. DRB has been providing this information and it has been very beneficial for retirees to understand how a proposed amendment would affect their health insurance coverage. It has also been beneficial for DRB to address retirees’ concerns with specific plan language before implementing plan amendments.

Definitions should be added for unique terms and concepts that are used in these regulations. If a term is defined in another section of chapter 2 AAC 39, the regulation can reference the definition in the other section by citation. A couple of terms that should be included in the definition section are stakeholders, plan benefits, and third-party administrator.

RPEA understands there may be very specific times when DRB needs to adopt an emergency plan change to respond to a public health or other state or national emergency. However, that should be the exception, and the language in the regulations needs to be narrow. If an emergency plan amendment is necessary, adoption of the plan amendment should be followed by a public process to evaluate the change, similar to the administrative process used when an emergency regulation is adopted. It does not need to be extensive, but it does need to provide retirees notice and an opportunity to be heard, as well as allow input from the RHPAB.

The proposed language under 2 AAC 39.280(d)(2) and 2 AAC 39.390(d)(2) is vague and undefined. The concept of “emerging technology or medical treatments and services” could be interpreted quite broadly and could potentially include any proposed change to plan benefits. This defeats the purpose of having a public process defined in regulations. RPEA recommends this language be deleted from the proposed regulations.

Under 2 AAC 39.280(d)(3); and 2 AAC 39.390(d)(3), what does “immediate preservation of the orderly operation” mean for an insurance plan? Again, this is vague and overly broad language that could be used to justify any proposed change to plan benefits. RPEA recommends this language be deleted from the proposed regulations.

The authorities cited for adopting each regulation may need to be reviewed. At a minimum, it appears AS 39.35.003 and AS 39.35.004 should be cited on all the regulations since these are the statutes that specifically give the Commissioner the authority to adopt regulations. AS 39.35.005 is the process by which the Commissioner adopts regulations, not the Commissioner’s authority to adopt a regulation, and may not be necessary to include in the citations. AS 39.30.090 is the only authority cited for 2 AAC 39.280 and 2 AAC 39.390; however, this statute deals with the procurement of group insurance. It does not seem to be an appropriate citation for adopting the process for changing health insurance coverage.

The current regulations on the appeal process are obsolete; the statutory authority for these regulations was repealed in 2007. RPEA understands DRB is not ready to propose updated appeal regulations; however, these obsolete regulations must be repealed in their entirety. RPEA feels strongly that the DRB must take this action as part of this draft regulation package. If this is done now as part of this regulation package, then the Articles used in 2 AAC 39 can be reorganized as proposed in Attachment 1. 2 AAC 39.500 – 2 AAC 39.590 and 2 AAC 39.600 – 2 AAC 39.690 should be repealed now. Under RPEA’s proposed restructuring of the Articles, new appeal regulations can be adopted under 2 AAC 39.700 – 2 AAC 39.790 when DRB is ready to move forward with that public process.

Thank you for considering these comments. As the RPEA’s representative on the RHPAB Regulations subcommittee, I am happy to discuss any of the issues raised or answer questions.

Attachment 1: Recommended Structure for Grouping Sections in 2 AAC 39 into Articles

Attachment 2: Proposed Language for Regulations to Implement a Process to Change the Retiree Health Plans

cc: Betsy Wood, Acting Chief Health Administrator, Division of Retirement and Benefits
Retiree Health Plan Advisory Board Members
Randall Burns, Retired Public Employees of Alaska