

## Interpretive Memorandum No. 2013-6

**DATE:** REVISED AUGUST 10, 2015 (Originally issued June 24, 2013)

**POLICY TOPIC:** RETROACTIVE MEDICAL SUBSIDY PAYMENTS TO RETIREES OF POLITICAL SUBDIVISIONS (NON-STATE EMPLOYEES)

### QUESTIONS/SCENARIO:

Some Retirees of political subdivisions are not eligible for the Medical Subsidy when they first retire, usually because the Retiree has not reached the minimum age to qualify for the subsidy. In such cases, the Retiree may still enroll in the medical plan of his or her former employer and either pays the premiums directly to the employer or has the premiums deducted from his or her NHRS retirement annuity payment for remittance to the employer. When the Retiree attains the required age (“ages-in”) and is paying premiums directly, NHRS typically does not know if the Retiree is enrolled in the former employer’s plan and, therefore, eligible for the subsidy. When NHRS learns of this at a later date, the issue arises whether the Retiree should receive a retroactive payment of the subsidy that he or she would have received if the subsidy payments had begun when the Retiree was first eligible.

The longstanding practice has been to make a retroactive payment after verifying with the employer that the Retiree was, in fact, enrolled in the former employer’s medical plan and only after the Member has requested the retroactive payment.

The question is whether NHRS should continue to make retroactive subsidy payments to Retirees of political subdivisions?

**CONCLUSION:** Retroactive payments should continue to be made for the following reasons.

### ANALYSIS

1. **The Plain Language of the Statute.** The plain language of RSA 100-A:52, A:52-a and A:52-b, provides that NHRS “*shall pay the cost for . . . medical and surgical benefits in the employer sponsored plan provided for active employees of the Retiree’s former employer, subject to the provisions of this section . . .*”. There are no provisions that require the Retiree to make a formal application or otherwise give notice to NHRS in order to be eligible for the subsidy. Thus, the plain language of the statute creates an absolute obligation to pay the subsidy and nothing indicates that the retroactive

payment should not be made or that the subsidy benefit commences only after the receipt of notice from the Retiree.

As a procedural matter, at the time of the Member's retirement, NHRS staff completes a Health Insurance Subsidy Certification Form ("Certification Form") to determine eligibility for the subsidy. This certification form is mailed to the retired Member with a copy imaged to the Retiree's Pension Gold record. To receive the benefit of the Medical Subsidy, the retired Member must submit to NHRS a Retirement Annuity Deduction Authorization for Retiree Health Benefits Form if he or she is immediately eligible. If the Retiree is not immediately eligible but will "age-in" later, the Certification Form clearly states that *"At least three months before your 55<sup>th</sup>/60<sup>th</sup> birthday [as the case may be] you will be responsible for ensuring that a 'Retirement Annuity Deduction Authorization for Retiree Health Benefits' form is obtained from, completed, and filed with your former employer for submission to NHRS"*. This language informs the Retiree that NHRS will not initiate payment of the subsidy unless the Retiree gives notice of eligibility by completing a written authorization to deduct premium costs from his or her pension payments. However, this is merely a procedural notice requirement and, substantively, is not sufficient grounds for denying retroactive payment for Retirees who apply late after they age-in.

In addition, making retroactive subsidy payments is consistent with how retroactive payments are made with respect to other types of benefits. In short, retroactive benefits are denied only for those types of benefits where the statute clearly indicates that payments will not be made for periods prior to an application by the Member. For instance, the statutory provisions governing service retirements and ordinary disability retirements all expressly provide for a benefit commencement date that falls within a 60 day period not less than 30 nor more than 90 days subsequent to the filing of an application. For accidental disability benefits, Members must make an application to the Board of Trustees but the statute does not contain the 30/90 day language. In all cases, benefits are not paid with respect to any period of time occurring prior to the application. Similarly, Members must also apply to receive a vested deferred benefit and retroactive payments are not made. Thus, where the statute expressly requires an application, benefits are not paid retroactively. By contrast, for ordinary and accidental death benefits payable to a surviving beneficiary where the statute merely requires notice by means of "proper proof of death", the surviving beneficiary is not required to make a formal application and benefits are payable retroactive to the date of death.

RSA 100-A:52, A:52-a and A:52-b, expressly require neither an application nor notice. However, notice has to be implicitly required by the statute as NHRS cannot act upon an event of which it is not aware. Payment of the subsidy is, at the most, contingent on mere notice but not a formal application. Thus, the Medical Subsidy is more analogous to the survivor annuity benefits that merely require proof of death and are paid retroactively as opposed to the service and disability retirements that require an application and are not paid retroactively.

**2. Longstanding Practice.** Notwithstanding the analysis above regarding the plain statutory language, even if an argument can be made that the language is ambiguous, the longstanding NHRS practice has been to make retroactive payments and, absent a clear statutory imperative to the contrary, changing the practice now would appear arbitrary under the legal doctrine of administrative deference.

**3. Fairness and Consistency.** In the interest of fairness, recoupments of overpaid subsidies are made on a retroactive basis and it seems consistent to make subsidy payments retroactive also. The Retiree who applies late may receive a large retroactive payment but this is not a windfall to the Retiree but, rather, represents a delayed payment of amounts that should have been paid in the past. The sole condition for retroactivity is proof that the Retiree was covered on the employer's plan for the period requested.

**STATUTORY REFERENCE:** RSA 100-A:52, RSA 100-A:52-a

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**Approved by Mark F. Cavanaugh, Esq.**  
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**Approval Date**