

EMERGENCY REGULATION OF THE COMMISSIONER OF INSURANCE

LCB File No. E003-13

(Effective for 120 days after August 2, 2013)

EXPLANATION – Matter in *blue bold italics* is new; matter in brackets **H** is material to be omitted.

AUTHORITY: NRS 679B.130 and 233B.0613 and section 25 of Assembly Bill 425 of the 77th (2013) Legislative Session

Section 1 The Nevada Administrative Code is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 through 24, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires:*

- 1. “Commissioner” means the Commissioner of Insurance.*
- 2. “Division” means the Division of Insurance of the Department of Business and Industry.*
- 3. “Instructor” means the person who will be responsible for teaching the course material to the course participants. The instructor may be, but is not required to be, the same person as the sponsor.*
- 4. “Sponsor” means the person seeking approval for a course of instruction pursuant to section 4 of this regulation.*
- 5. “Unsuitable person” has the meaning ascribed to it in NAC 679B.039.*

Sec. 3. *The Commissioner may contract with a person outside the Division to perform all or part of the administrative duties of the precertification or certification programs, subject to the direction and approval of the Commissioner.*

PRECERTIFICATION EDUCATION

Sec. 4. *In addition to the requirements of Sections 2 through 26, inclusive, of Assembly Bill 425 of the 77th (2013) Session of the Nevada Legislature, an applicant for a certificate to*

act as an exchange enrollment facilitator shall complete, with a final grade of at least 70 percent, a precertification course of instruction approved by the Commissioner. The precertification course shall have been completed within the year immediately preceding the date of the application for the certificate.

Sec. 5.

- 1. A precertification course of instruction and the instructor for the precertification course shall be approved by the Division before the precertification course is offered to a prospective applicant for a certificate. The sponsor of the precertification course shall submit to the Division:
 - (a) An application for approval of the instructor, specifying his or her experience and qualifications;*
 - (b) An application for approval of the precertification course, including a detailed outline of the precertification course and a description of the scale to be used in grading the persons taking the precertification course;*
 - (c) A schedule of the times the precertification course is to be taught; and*
 - (d) A certification that the content of the precertification course complies with sections 4 through 12, inclusive, of this regulation.**
- 2. The Division shall not approve a precertification course which:
 - (a) Substantially involves techniques for taking the certification examination;*
 - (b) Is directed toward teaching techniques of selling, soliciting, or negotiating insurance, motivation or finding applicants for insurance;*
 - (c) Is substantially a course to teach clerical skills; or*
 - (d) Does not meet the requirements of sections 4 through 12, inclusive, of this regulation.**
- 3. No approved precertification course may have more than 8 hours of instruction in the classroom each day.*

Sec. 6.

- 1. An instructor shall:
 - (a) Have at least 5 years of relevant experience in the topic to be taught; or**

- (b) Be approved by the Nevada System of Higher Education to teach insurance within that System.*
- 2. No more than one-third of any precertification course approved by the Division may be taught by:*
 - (a) An instructor who does not satisfy the requirements of subsection 1;*
 - (b) Videotapes or audiotapes; or*
 - (c) Any other mechanical teaching aids.*
- 3. For the purposes of this section, “mechanical teaching aids” includes, but is not limited to, digital or electronic versions of mechanical methods of instruction such as slide show presentation software, video or audio recordings transmitted via the Internet, and other similar methods of communication.*

Sec. 7.

- 1. A correspondence, extension or self-study precertification course may be approved by the Division if:*
 - (a) The precertification course satisfies all of the requirements of sections 4 through 12, inclusive, of this regulation;*
 - (b) The student has quick and easy access to the sponsor or instructor of the precertification course; and*
 - (c) The student shall pass a final examination at the end of the precertification course to receive credit and the examination is directly monitored by the sponsor, the instructor, or the sponsor’s or instructor’s representative.*
- 2. The Division shall determine the equivalent number of hours of instruction in the classroom allowed for each approved correspondence, extension or self-study precertification course.*

Sec. 8.

- 1. A precertification course shall consist of:*
 - (a) At least 5 hours of instruction in the classroom in the provisions of title 57 of NRS and the regulations adopted pursuant to those provisions, at least one-half of which shall cover the laws and regulations common to all lines of insurance; and*

(b) At least 15 hours of instruction in the classroom covering:

- (1) Principles and concepts of insurance in general;*
- (2) Basic principles and concepts of health insurance;*
- (3) The contract for health insurance and provisions of the policy;*
- (4) Health insurance offered by private companies;*
- (5) Health insurance offered by a governmental entity;*
- (6) Types of policies and coverage for health insurance;*
- (7) Group insurance and plans of special insurance;*
- (8) The ethical responsibilities of the exchange enrollment facilitator; and*
- (9) Regulation by the government.*

2. The Division shall determine pursuant to section 6 of this regulation if a correspondence, extension or self-study precertification course meets the requirements of paragraphs (a) and (b).

Sec. 9.

- 1. Each sponsor of a precertification course shall maintain a complete record of each person attending the precertification course. The record shall:*
 - (a) Indicate each person's attendance;*
 - (b) Indicate his or her final grade in the precertification course;*
 - (c) Be available for review by the Division upon request during normal business hours;*
and
 - (d) Be retained by the sponsor for 4 years.*
- 2. Each sponsor of a precertification course shall submit quarterly to the Division for each precertification course offered, the sponsor of the precertification course, the date the precertification course was completed, and the name and grade of each person attending the precertification course. If the precertification course is a self-study precertification course, the sponsor shall also submit the name and description of the precertification course.*
- 3. Except as otherwise provided in subsection 4, each sponsor of a precertification course shall give to each person who successfully completes the precertification course an original certificate of completion. The certificate shall list the sponsor and instructor of*

the precertification course, the grade obtained by the student in the precertification course, the location and times the precertification course was offered, and the fact that the precertification course was for an exchange enrollment facilitator. An applicant for an exchange enrollment certification shall submit the certificate with his or her application for a certification.

- 4. The sponsor of a precertification course may comply with the provisions of subsection 3 by providing to a person who successfully completes a precertification course an electronically generated certificate of completion, provided that the electronically generated certificate of completion cannot be altered in any way. The sponsor of a precertification course that elects to issue an electronically generated certificate of completion shall upload the applicant's course completion directly to the Division's education database as soon as practicable.*

Sec. 10.

- 1. If the sponsor, instructor or outline of a precertification course changes after approval has been granted, the new sponsor, instructor or outline of the precertification course shall be approved by the Division prior to the precertification course being offered again.*
- 2. A person designated by the Division may audit any approved precertification course to ensure that the precertification course, instructor or sponsor continues to meet the requirements of this regulation.*
- 3. If the sponsor, instructor or outline of the precertification course has changed and has not been reapproved, or if the sponsor or instructor is not following the approved outline of the precertification course, the Division may suspend its approval of that precertification course.*
- 4. If the sponsor or instructor has not taken appropriate action to correct the conditions that were the basis of the suspension within 30 days, the Division may terminate its approval of the precertification course.*
- 5. If the sponsor or instructor of an approved precertification course solicits from any person information on the content of the questions of the Division's certification examination, the Division may suspend its approval of that instructor or sponsor for at least 1 year.*

Sec. 11.

- 1. The Commissioner shall refuse to certify, or shall suspend or revoke the certification of any person who knowingly submits to the Division a false or fraudulent certificate of completion of education.*
- 2. The Division shall terminate its approval of any sponsor or instructor who knowingly submits or issues a false or fraudulent:*
 - (a) Certificate of completion of education;*
 - (b) Outline or schedule for a precertification course; or*
 - (c) Application for approval as an instructor or sponsor.*
- 3. The Division shall not approve any sponsor or instructor who has had his or her approval terminated pursuant to this section for at least 1 year after the approval of the sponsor or instructor was terminated.*
- 4. The Commissioner may suspend or terminate the approval of any sponsor or instructor who the Commissioner has determined is an unsuitable person.*

Sec. 12. *Every application, certificate or other form required to be filed with the Division pursuant to sections 4 through 12, inclusive, of this regulation shall be on a form furnished by the Division.*

CERTIFICATION OF EXCHANGE ENROLLMENT FACILITATORS

Sec. 13. *Pursuant to sections 9, 11 and 25 of Assembly Bill 425 of the 77th (2013) Session of the Nevada Legislature an applicant for a certification as an exchange enrollment facilitator must pass a written examination and pay an examination fee for the administration of the examination. The examination fee:*

- 1. Is subject to the Division's contractual agreement with the vendor providing the exam services;*
- 2. Is payable to the vendor providing the examination service; and*
- 3. May not exceed \$100 US dollars for a single sitting.*

Sec. 14. *An applicant for a certification as an exchange enrollment facilitator shall attain an adjusted score of 80 or more points on the appropriate certification examination to pass the examination. The examination shall have been successfully completed within the year immediately preceding the date of application for the certification.*

Sec. 15.

1. An applicant for a certification as an exchange enrollment facilitator shall:

(a) Submit with his or her application:

(1) Two complete sets of fingerprints which the Commissioner may forward to the Central Repository for Nevada records of Criminal History for a search concerning him or her:

(I) Conducted by the Federal Bureau of Investigation in its national criminal records; and

(II) Of the Central Repository for Nevada Records of Criminal History; and

(2) A cashier's check or money order made payable to the Central Repository for Nevada Records of Criminal History for the applicable fees established by the Records and Technology Division of the Department of Public Safety.

(b) Comply with the procedures for obtaining the information required in this subsection that are established by the Records and Technology Division of the Department of Public Safety and the Central Repository for Nevada Records of Criminal History in NRS 179A.075 through 179A.160, inclusive.

2. The Commissioner may issue a certification as an exchange enrollment facilitator before the criminal background search of the applicant conducted pursuant to subsection 1 is completed if the applicant:

(a) Indicates and certifies on his or her application for a certification as an exchange enrollment facilitator that he or she has no criminal history; and

(b) Has complied with the procedures required pursuant to subsection 1.

3. The Commissioner may contract with a person outside the Division to process the fingerprints submitted pursuant to subsection 1 so that the fingerprints may be electronically transmitted to the Central Repository for Nevada Records of Criminal History or another law enforcement agency.

DUTIES OF EXCHANGE ENROLLMENT FACILITATORS TO CLIENTS

Sec. 16. *As used in sections 16 through 24, inclusive, unless the context otherwise requires, the words and terms defined in sections 17 through 21, inclusive, have the meanings ascribed to them in those sections.*

Sec. 17. *“Affiliate” means a person that controls, is controlled by, or is under common control with, an exchange enrollment facilitator or person appointed by the Exchange. As used in this section, “appointment” has the meaning ascribed to it in section 2.5 of Assembly Bill 425 of the 77th (2013) Session of the Nevada Legislature, “control” has the meaning ascribed to it in NRS 692C.050, and “Exchange” has the meaning ascribed to it in section 4 of Assembly Bill 425 of the 77th (2013) Session of the Nevada Legislature.*

Sec. 18. *“Client” means a natural person, corporation, association, partnership or other legal entity that is a named insured or seeks the services of an exchange enrollment facilitator to become an insured or receive a quotation.*

Sec. 19. *“Compensation” means consideration in any form for the production of insurance received by an exchange enrollment facilitator from any source.*

Sec. 20. *“Represents” means to act on behalf of or in conjunction with a client in relation to an insurance transaction or potential insurance transaction.*

Sec. 21. *“Transaction” has the meaning ascribed to it in NRS 679A.130. The term includes:*

- 1. Facilitating enrollment in or potential facilitation of enrollment in insurance.*
- 2. The giving of information concerning matters related to the procurement of insurance, including, without limitation, the nature and type of insurance policies, their coverage, terms, duration, premiums and premium payment arrangements.*

Sec. 22. *The duties imposed on an exchange enrollment facilitator in section 23:*

- 1. Apply to every exchange enrollment facilitator.*
- 2. Are in addition to and not in lieu of any other duty imposed on an exchange enrollment facilitator by the Nevada Insurance Code or the common law of agency as recognized in this state.*

Sec. 23. *An exchange enrollment facilitator who represents a client in an insurance transaction:*

- 1. Shall not place his or her interest above the interest of the client.*
- 2. Shall, before or simultaneously with a client's purchase of insurance, or the consummation of any other transaction that would entitle the exchange enrollment facilitator to compensation as a result of his or her representation of the client, disclose to the client:*
 - (a) That the exchange enrollment facilitator may receive compensation in some form as a result of his or her representation of the client in the transaction.*
 - (b) The name and identity of the source of the compensation and whether the exchange enrollment facilitator has any ownership interest in, or is under common control with, the person providing the compensation.*
 - (c) That the compensation received by the exchange enrollment facilitator may differ depending upon the product and insurer.*
 - (d) The identity of any other person that the exchange enrollment facilitator knows, or reasonably ought to know, will receive compensation for assisting the exchange enrollment facilitator in the insurance transaction.*

These disclosures shall be followed by a documented acknowledgment by the client and the exchange enrollment facilitator that clearly indicates the client's understanding of the contents of the disclosure statement before or simultaneously with the consummation of the insurance transaction. In the case of a transaction consummated over the telephone or by electronic means, the client's understanding of the disclosure shall be documented by the exchange enrollment facilitator at the time of the transaction and followed by a documented acknowledgment by the client and exchange enrollment facilitator.

**STATE OF NEVADA
DIVISION OF INSURANCE**

**INFORMATIONAL STATEMENT
PURSUANT TO NRS 233B.066(1)(g-k) and (2)¹
RE: EMERGENCY REGULATION**

July 26, 2013

The following statement is submitted for the emergency regulation creating a new section of the Nevada Administrative Code covering the certification of exchange enrollment facilitators as required by Section 25 of Assembly Bill 425 of the 77th (2013) Session of the Nevada Legislature.

1. NRS 233B.066(1)(g): The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

(1) Both adverse and beneficial effects:

(a) On Business:

The Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010, as amended, collectively known as the Affordable Care Act (ACA) mandates and/or permits States to create new categories of persons and/or entities such as Navigators, In-Person Assisters, and Certified Application Counselors, herein collectively referred to as exchange enrollment facilitators (EEF). These EEFs will assist individuals and small business owners in determining eligibility for various programs offered through the ACA and in enrolling individuals and small business owners in programs for which they are deemed eligible.

The emergency regulation finalizes a certification framework for EEFs, ensures that they meet certain minimum competency and conduct standards and protects the interests of businesses which may retain the services of an EEF.

(b) On the Public:

As with businesses, the emergency regulation protects the interests of members of the public who may retain the services of an EEF by ensuring that the EEF meets certain minimum competency and conduct standards.

(2) Both immediate and long-term effect:

(a) On Business:

¹ Pursuant to NRS 233B.066(2), the requirements of paragraphs (b) to (f), inclusive, of subsection 1 of NRS 233B.066 do not apply to emergency regulations.

The emergency regulation permits interested individuals and entities to begin their education and training prior to the federally-mandated open enrollment period beginning October 1, 2013. The Commissioner believes that proper education and training be undertaken by prospective EEF candidates with as much time as possible in advance of open enrollment such that businesses are not served by insufficiently trained EEFs. It is the Commissioner's intention to subsequently adopt a permanent regulation similar or identical to this emergency regulation through the rulemaking process, ensuring long-term stability in the oversight of all EEFs.

(b) On the Public:

The emergency regulation permits interested individuals and entities to begin their education and training prior to the federally-mandated open enrollment period beginning October 1, 2013. The Commissioner believes that proper education and training be undertaken by prospective EEF candidates with as much time as possible in advance of open enrollment such that the public is not served by insufficiently trained EEFs. It is the Commissioner's intention to subsequently adopt a permanent regulation similar or identical to this emergency regulation through the rulemaking process, ensuring long-term stability in the oversight of all EEFs.

2. NRS 233B.066(1)(h): The estimated cost to the agency for enforcement of the proposed regulation.

The Division anticipates no significant marginal cost for the enforcement of this emergency regulation. The Division currently enforces similar regulations for persons involved in the sale or administration of insurance. There are approximately 117,000 persons licensed in the sale or administration of insurance as of December 14, 2012; the Division anticipates a few hundred individuals will seek certification as an EEF. If the Division's estimates are correct, the population of certified EEFs will be less than 1% of the population of persons licensed in the sale or administration of insurance. So long as the incidence of misfeasance and malfeasance among the certified EEF population is similar to that among the licensed producer population, the expected increase will be statistically insignificant when compared to the existing regulatory cost.

3. NRS 233B.066(1)(i): A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:

The emergency regulation overlaps, duplicates, or otherwise compliments a regulation or series of regulations issued by the federal Center for Consumer Information and Insurance Oversight (CCIIO) of the Center for Medicare and Medicaid Services (CMS), a division of the Department of Health and Human Services (HHS). Section 1311(i) of the ACA, codified as 42 U.S.C. §18031(i), establishes the requirement that states create a navigator program. 42 U.S.C. §18031(i)(3) generally requires navigators to raise awareness of the availability of qualified health plans, distribute fair and impartial

information concerning enrollment in qualified health plans, Facilitate enrollment in qualified health plans, and provide referrals to any applicable office of health insurance consumer assistance. 42 U.S.C. §18031(i)(4-5) requires that navigators avoid conflicts of interest, provide information that is fair, accurate and impartial, and be “licensed if appropriate”. On March 27, 2012 CCIIO/CMS issued final regulation CMS-9989-F which, in part, outlined the program standards for navigators; the standards were codified as 45 C.F.R §155.210. 45 C.F.R. §155.210(c)(1)(iii), detailing the entities and individuals eligible to be a navigator, stipulated that any prospective navigator “~~meet~~ meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable”. The preamble to CMS-9989-F, in interpreting the provisions of 45 C.F.R. §155.210(c)(2) went the additional step in determining that any licensing, certification or other standards prescribed by a State or Exchange cannot lead to the prospective navigator being licensed as a(n) agent/broker/producer of insurance. The emergency regulation is necessary to fill in the gaps in 42 U.S.C. §18031 by CMS-9989-F deferring the licensure or certification of navigators to the state level.

4. NAC 233B.066(1)(j): If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:

Neither 42 U.S.C. §18031 nor 45 C.F.R. §155.210 require a state to license, certify or otherwise impose standards for navigator training or conduct. The Division has proposed, and the Governor and Legislature agreed through the passage and approval of AB 425 (2013), that EEF personnel, including navigators, be properly educated and accountable in order to protect Nevada consumers, both individuals and businesses.

5. NAC 233B.066(1)(k): If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used:

The emergency regulation includes a fee for sitting the certification examination for an exchange enrollment facilitator. The fee is to be paid directly to the Division’s contracted examination vendor as compensation for administering the examination and cannot exceed \$100 US dollars per sitting. Because the fee is paid directly to the contracted examination vendor the Division anticipates collecting no additional fee revenue resulting from the proposed emergency regulation. The Silver State Health Insurance Exchange anticipates having approximately 200 exchange enrollment facilitators receiving grant funding, which results in the Division’s contract vendor realizing no more than \$20,000 of fee revenue from the funded EEFs. It is unknown how many people will seek an EEF certification without receiving grant funding from the Exchange.