

**LCB File No. R076-02**

**PROPOSED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON  
PROPOSED REGULATIONS**

May 24, 2002

The Department of Business and Industry, Division of Insurance (Division) is proposing new regulations pertaining to the Essential Insurance Association, Medicare Supplement Policies, Bail Advertising, Prohibition of Discretionary Clauses in Health Insurance Plans, Audited Financial Reports, Dental Care and Policies of Health Insurance, and Multiple Employer Welfare Arrangements. A workshop has been set for 9:00 a.m., on June 28, 2002, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2<sup>nd</sup> Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics addressed in the proposed regulations.

- 1. Essential Insurance Association: Proposed regulation is to replace the emergency regulation of March 15, 2002, establishing the Medical Liability Association of Nevada, a Nevada Essential Insurance Association. Emergency regulations are effective for only a period of 120 days.**
- 2. Medicare Supplement Policies: Proposed regulation amends the requirements placed on insurers of Medicare Supplement policies to conform with federal laws. As a result of the federal passage of the Benefits Improvement and Protection Act and the Ticket to Work Act, coverage under Medicare has been modified. Changes to Medicare effects coverage under Medicare Supplement policies. The proposed changes to the Medicare Supplement regulations incorporate the federal changes.**
- 3. Bail Advertising: Proposed regulation adds language to ensure that the public is protected from deceptive or misleading advertising specifically related to bail transactions.**
- 4. Prohibition of Discretionary Clause in Health Insurance Plans: The proposed regulation prohibits a health carrier from issuing a policy, contract, certificate or agreement that contains a provision reserving discretion to the health carrier to interpret the terms of the contract, unless the carrier fully discloses all the rights available to the policyholder in the event of a dispute.**
- 5. Audited Financial Reports: Proposed regulation updates certain requirements of insurers to register its independent certified public accountant with the**

**Commissioner of Insurance and provides for the Commissioner of Insurance to not recognize an independent certified public accountant which has either directly or indirectly entered into an agreement of indemnity with respect to the audit of the insurer.**

- 6. Dental Care and Policies of Health Insurance: Proposed regulation states that a health insurance policy that provides coverage for anesthesia in a hospital or out-patient setting must not deny coverage for anesthesia provided during certain dental procedures.**
- 7. Multiple Employer Welfare Arrangements: Proposed regulation requires multiple employer welfare arrangements to meet the qualifications as any domestic insurer, set forth in Chapter 680A of the NRS.**

Members of the insurance industry, business community, and the public are also invited to comment on any impact the proposed regulations may have on small businesses. The Division has reviewed the proposed regulations and determined that the regulations do not impose a direct or significant impact on a small business, or directly restrict the formation, operation, or expansion of a small business.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at **www.leg.state.nv.us**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry  
Division of Insurance  
788 Fairview Drive, Suite 300  
Carson City, NV 89701

Department of Business and Industry  
Division of Insurance  
2501 East Sahara Avenue, Suite 302  
Las Vegas, NV 89104

Legislative Counsel Bureau  
Capitol Complex  
Carson City, NV 89710

Blasdel Building  
Capitol Complex  
Carson City, NV 89710

State Capitol  
Capitol Complex  
Carson City, NV 89710

Capitol Press Room  
State Capitol Basement  
Carson City, NV 89710

County Clerk  
Courthouse  
Carson City, NV 89710

Nevada State Library & Archives  
Capitol Complex  
Carson City, NV 89710

Carson City Library  
900 North Roop Street  
Carson City, NV 89701

Churchill County Library  
553 South Maine Street  
Fallon, NV 89406

Las Vegas Library  
833 Las Vegas Blvd. North  
Las Vegas, NV 89101

Douglas County Library  
1625 Library Lane  
P.O. Box 337  
Minden, NV 89423

Elko County Library  
720 Court Street  
Elko, NV 89801

Goldfield Public Library  
Fourth & Cook Street  
P.O. Box 430  
Goldfield, NV 89013

Eureka Branch Library  
10190 Monroe Street  
P.O. Box 293  
Eureka, NV 89316

Humboldt County Library  
85 East 5<sup>th</sup> Street  
Winnemucca, NV 89445

Battle Mountain Branch Library  
P.O. Box 141  
Battle Mountain, NV 89820

Lincoln County Library  
93 Main Street  
P.O. Box 330  
Pioche, NV 89043

Lyon County Library  
20 Nevin Way  
Yerington, NV 89447

Mineral County Library  
First & A Street  
P.O. Box 1390  
Hawthorne, NV 89415

Tonopah Public Library  
171 Central Street  
P.O. Box 449  
Tonopah, NV 89049

Pershing County Library  
1125 Central Avenue  
P.O. Box 781  
Lovelock, NV 89419

Storey County Library  
95 South R Street  
P.O. Box 14  
Virginia City, NV 89440

Washoe County Library  
301 South Center Street  
P.O. Box 2151  
Reno, NV 89505

White Pine County Library  
950 Campton Street  
Ely, NV 89301

Clark County Library  
1401 East Flamingo Road  
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, extension 260.

DATED this \_\_\_\_\_ day of May, 2002.

By: \_\_\_\_\_  
ALICE A. MOLASKY-ARMAN  
Commissioner of Insurance

## NOTICE OF INTENT TO ACT UPON A REGULATION

### Notice of Hearing for the Adoption of Regulations of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 9:00 a.m., on June 21, 2002, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, Second Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

#### REGULATION FOR ANNUAL AUDITED FINANCIAL REPORTS

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The proposed regulation is needed to update certain requirements regarding an insurer's registration of its independent public accountant and the filing of the insurer's Annual Audited Financial Reports with the Commissioner of Insurance.
2. The proposed regulation provides for the Commissioner of Insurance to not recognize an independent public accountant who has either directly or indirectly entered into an agreement of indemnity with respect of the audit of the insurer and replaces the definition of an certified public accountant with an independent certified public accountant.
3. Estimated economic effect of the regulation:  
On the business which it is to regulate:  
The proposed regulation should not have either an immediate or long-term impact on the insurers.  
On the public:  
The proposed regulation should have no economic impact on the public.
4. The Division will not incur any additional expense to enforce the proposed regulation.
5. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.
6. The proposed regulation does not establish any new fees or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before June 21, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation to be will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Business and Industry  
Division of Insurance  
788 Fairview Drive, Suite 300  
Carson City, NV 89701

Department of Business and Industry  
Division of Insurance  
2501 East Sahara Avenue, Suite 302  
Las Vegas, NV 89104

Legislative Counsel Bureau  
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1125 Central Avenue  
P.O. Box 781  
Lovelock, NV 89419

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95 South R Street  
P.O. Box 14  
Virginia City, NV 89440

Washoe County Library  
301 South Center Street  
P.O. Box 2151  
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Clark County Library  
1401 East Flamingo Road  
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive,

Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, ext. 260.

DATED this \_\_\_\_\_ day of May, 2002.

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ALICE A. MOLASKY-ARMAN  
Commissioner of Insurance

H/Staff/Shared/regulation.notice of hearingAnnualAuditFinRep

**PROPOSED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE**

**REGULATIONS FOR  
ANNUAL AUDITED FINANCIAL REPORTS**

Explanation – Matter *bold/italics* is new, matter in ~~brackets/strikethrough~~ is material to be omitted.

**Authority:** NRS 679B.130, NRS 680A.265

**Section 1.** Chapter 680A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

**Sec. 2.** *“Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.*

**Sec. 3.** *Upon written application of any insurer, the commissioner may grant an exemption from compliance with this section if the commissioner finds, upon review of the application, that compliance with this section would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer’s written request for an exemption from this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with NAC 679B.161 pertaining to administrative hearing procedures.*

**Sec. 4.** *In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant. For such insurers, the letter required in NAC 680A.182 and 680A.184 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner pursuant to NRS 680A.265 and NAC 680A.178 and shall affirm that the opinion expressed is in conformity with those requirements.*

**Sec. 5.** *If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.*

**Sec. 6.** NAC 680A.006 is hereby amended to read as follows:

~~["Certified public accountant"]~~ *Accountant* or *"independent certified public accountant"* means:

1. An independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or accounting firm is licensed to practice.
2. For an insurer domiciled in Canada or Great Britain, a chartered accountant.

**Sec. 7.** NAC 680A.018 is hereby amended to read as follows:

"Workpaper" means the record kept by ~~fa]~~ *the independent* certified public accountant of the procedure followed, the test performed, the information obtained and the conclusion reached pertinent to his examination of the financial statements of an insurer. A workpaper includes, but is not limited to, an audit planning document, a work program, an analysis, a memorandum, a letter of confirmation and representation, an abstract of company documents and a schedule or commentary which are prepared or obtained by the *independent* certified public accountant in the course of his examination of the financial statements of an insurer and which support his opinion thereof.

**Sec. 8.** NAC 680A.172 is hereby amended to read as follows:

For the purposes of NRS 680A.265, the commissioner will find that good cause exists for the exemption of an insurer from the requirements of NRS 680A.265 *for the year* if, at the end of the most previous calendar year, the insurer has direct premiums written in this state in an amount which is less than \$1,000,000 and has less than 1,000 policyholders or certificate holders of directly written policies in the United States unless:

1. The commissioner makes a specific finding that compliance by that insurer is necessary for the commissioner to carry out his statutory responsibilities; or
2. The insurer has assumed premiums pursuant to contracts or treaties of reinsurance in an amount of \$1,000,000 or more.

**Sec. 9.** NAC 680A.182 is hereby amended to read as follows:

1. An insurer required by NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, to file an annual audited financial report ~~[shall]~~ *must within sixty (60) days after becoming subject to this requirement* register with the commissioner in writing the name and address of ~~[its]~~ *the independent* certified public accountant *or accounting firm.* ~~[as follows:]~~

~~[(a) If, as of May 23, 1996, the insurer is required to file an annual audited financial report and the insurer has retained a certified public accountant, not later than 60 days after May 23, 1996.~~

~~—[(b)] (a) [If, as of May 23, 1996, the] insurers [is required to file an annual audited financial report, but has] not [retained] **retaining** [a certified public accountant, before January 1 of the year in which the insurer must file its next annual audited financial report in accordance with NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.~~

~~(c) If, as of May 23, 1996, the insurer is not required to file an annual audited financial report, before January 1 of the first year in which the insurer must file an annual audited financial report in accordance with NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.]~~

2. The insurer shall obtain a letter from its *independent* certified public accountant and file a copy of the letter with the commissioner which:

(a) States that the accountant is aware of the provisions of Title 57 of NRS, and the regulations adopted pursuant thereto, that relate to accounting and financial matters; and

(b) Affirms that the accountant will express his opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by Title 57 of NRS, and the regulations adopted pursuant thereto, specifying such exceptions as he deems appropriate.

**Sec. 10.** NAC 680A.186 is hereby amended to read as follows:

1. Except as otherwise provided in NAC 680A.188 and 680A.190, the commissioner will recognize ~~[a]~~ *an independent* certified public accountant as a qualified *independent* certified public accountant if the *independent* certified public accountant conforms to the standards contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants, and the Rules of Professional Conduct and the regulations of the Nevada state board of accountancy, or other similar code. ~~[of the state or country in which the accountant is certified, licensed or chartered.]~~

2. The commissioner will not recognize as a qualified *independent* certified public accountant ~~[a]~~ *an independent* certified public accountant who:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the *independent* certified public accountant is licensed or certified to practice; or

(b) For an insurer domiciled in Canada or Great Britain, is not a chartered accountant or accounting firm.

*(c) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.*

**Sec. 11.** NAC680A.190 is hereby amended to read as follows:

The commissioner will not recognize as a qualified *independent* certified public accountant, nor accept any annual audited financial report prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968, inclusive, or any dishonest conduct or practices under federal or state law;

2. Has been found to have violated any provision of Title 57 of NRS, or any regulation adopted pursuant thereto, with respect to any previous annual audited financial report submitted pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive;

3. Has demonstrated a pattern or practice of ~~[negligently]~~ failing to detect or disclose material information in previous annual audited financial reports filed pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive.

**Sec. 12.** NAC680A.192 is hereby amended to read as follows:

The commissioner will, if he deems it necessary, hold a hearing to determine whether ~~[a]~~ *an independent* certified public accountant is qualified for the purposes of NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive. If, based on the evidence presented, the commissioner determines that the accountant is not qualified, the commissioner will:

1. Rule that the accountant is not qualified for purposes of expressing his opinion on the financial statements in the annual audited financial report to be made pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and require the insurer to replace the accountant with ~~[a]~~ *an independent* certified public accountant who is so qualified; or

2. Take any other action determined to be necessary by the commissioner.

**Sec. 13.** NAC680A.196 is hereby amended to read as follows:

An examination of the insurer's financial statements by ~~an~~ *an independent* certified public accountant for the purposes of NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, must be conducted in accordance with:

1. Generally accepted auditing standards; and
2. Such other procedures set forth in the Financial Condition Examiner's Handbook of the National Association of Insurance Commissioners, as adopted by reference in NAC 679B.033, as the *independent* certified public accountant deems necessary.

**Sec. 14.** NAC680A.198 is hereby amended to read as follows:

680A.198 1. ~~An~~ *An independent* certified public accountant of an insurer required to furnish an annual audited financial report shall report to the board of directors or audit committee of the insurer each determination by the accountant that the insurer:

(a) Has materially misstated its financial condition as reported to the commissioner as of the date of the balance sheet currently under examination; or

(b) Does not, as of that date, meet the minimum requirements for capital and surplus as set forth in chapter 680A of NRS.

The report must be in writing and provided to the insurer not later than 5 business days after the accountant makes such a determination.

2. An insurer who receives a report from its *independent* certified public accountant pursuant to this section shall, not later than 5 business days after the date on which it receives the report from the accountant:

(a) Forward a copy of the report to the commissioner; and

(b) Provide the *independent* certified public accountant who made the report with evidence that the insurer has forwarded a copy of the report to the commissioner. If the *independent* certified public accountant does not, within the 5 business day period, receive evidence from the insurer that the insurer has forwarded a copy of the report to the commissioner in accordance with this section, the *independent* certified public accountant shall file with the commissioner a copy of its report within the next 5 business days.

3. ~~An~~ *An independent* certified public accountant is not liable in any manner to any person for any statement made in connection with this section if the statement is made in good faith in compliance with this section.

4. If the *independent* certified public accountant, after the annual audited financial report reviewed by the accountant has been filed pursuant to NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, becomes aware of any facts which affect his report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, which is hereby adopted by reference. A copy of the Professional Standards may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box 2209, Jersey City, New Jersey 07303 2209, at a cost of ~~94.25~~ *145 or at www.cpa2biz.com*.

**Sec. 15.** NAC680A.200 is hereby amended to read as follows:

If, following the audit of the financial statements of an insurer, ~~an~~ *an independent* certified public accountant notes any significant deficiency in the insurer's structure for internal control,

the insurer shall, not later than 60 days after the date on which the annual audited financial report is filed with the commissioner, file a written report which provides a description of the deficiency and of the remedial actions taken or proposed to correct the significant deficiency, if those actions are not otherwise described in the accountant's report filed with the annual audited financial statement.

**Sec. 16.** NAC680A.202 is hereby amended to read as follows:

~~[A]~~ **An independent** certified public accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter which states:

1. That the accountant is independent of the insurer and that he conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants, and the Rules of Professional Conduct and the regulations of the Nevada state board of accountancy, or other similar code. ~~[of the state or country in which the accountant is licensed, certified or chartered.]~~

2. The background and experience of the accountant in general and the experience of the staff of the accountant in auditing insurers, and whether each member of that staff which will audit the insurer is an independent certified public accountant. The provisions of NAC 680A.172 to 680A.204, inclusive, will not be construed as prohibiting the accountant from utilizing such staff as he deems necessary if that use of staff is consistent with the standards prescribed by generally accepted auditing standards.

3. That the accountant understands that the annual audited financial report and his opinion thereon will be filed in compliance with NRS 680A.265 and NAC 680A.172 to 680A.204, inclusive, and that the commissioner will be relying on this information to monitor and regulate the financial position of the insurer.

4. That the accountant consents to make his workpapers available for review by the commissioner or his designated agent in accordance with NAC 680A.204.

5. That the accountant is properly licensed, certified or chartered by the appropriate licensing authority in the state or country in which the accountant is licensed, certified or chartered, and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.

6. That the accountant is in compliance with the requirements for a qualified **independent** certified public accountant as set forth in NAC 680A.186, 680A.188 and 680A.190.

**Sec. 17.** NAC680A.204 is hereby amended to read as follows:

1. The **independent** certified public accountant of an insurer required to file an annual audited financial report pursuant to NRS 680A.265 shall make available for review by the commissioner or his designated agent all of the workpapers prepared by the accountant in the conduct of his examination and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the insurance division of the department of business and industry, or at any other reasonable place designated by the commissioner. The **independent** certified public accountant shall retain the workpapers and communications pertaining to its audit of the financial statements of an insurer for 7 years from the date of the report by the accountant on the annual audited financial report or until the insurance division has completed its examination of the annual audited financial report, whichever occurs first.

2. In the conduct of their examination of an annual audited financial report, the examiners of the division may make a photocopy of any pertinent workpapers relating to the audit which will

be retained by the division. The examination by the examiners is considered to be an investigation, and all workpapers and communications obtained during the course of such an investigation will be afforded the same confidentiality as other working papers relating to the examination which are generated by the division.