

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R127-03

Effective December 16, 2003

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

AUTHORITY: §§1-9, NRS 679B.130 and sections 3 and 5 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330.

Section 1. Chapter 616A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *Except as otherwise provided in section 3 of this regulation, an external review organization applying for the initial issuance of a certificate to conduct external reviews must submit to the Commissioner, on a form prescribed by the Commissioner, an application in writing and must provide to the Commissioner at the time of application:*

1. A written statement that identifies:

(a) The number of external reviewers that the external review organization employs, contracts with or otherwise retains to conduct external reviews;

(b) The specialty of each external reviewer;

(c) Whether each external reviewer is certified by the entity that regulates his specialty;

and

(d) The schedule of fees that the external review organization will charge to conduct an external review.

2. A written summary of the procedures that the external review organization will use to:

(a) Ensure that an external reviewer employed, contracted with or otherwise retained by the external review organization is qualified to conduct a specific external review;

(b) Ensure that the external review organization and any employee, agent or contractor of the external review organization does not have a conflict of interest as set forth in section 3 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330; and

(c) Submit a copy of the determination regarding an external review to each party to the external review.

3. A written affidavit that:

(a) The information contained in the application and any accompanying materials are complete and correct;

(b) The external review organization will conduct external reviews in accordance with sections 3 and 5 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330;

(c) The external review organization and any employee, agent or contractor of the external review organization will avoid a conflict of interest as set forth in section 3 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330; and

(d) The external review organization is not affiliated with:

(1) An organization for managed care which provides comprehensive medical and health care services to employees for injuries or diseases pursuant to chapters 616A to 617, inclusive, of NRS;

(2) An insurer;

(3) A third-party administrator; or

(4) A national, state or local trade association.

4. The fee required pursuant to section 6 of this regulation for the initial issuance of a certificate to conduct external reviews.

Sec. 3. *If an external review organization has been certified or accredited as an external review organization by an accrediting body that is nationally recognized, an external review organization applying for the initial issuance of a certificate to conduct external reviews must submit to the Commissioner, on a form prescribed by the Commissioner, an application in writing and must provide to the Commissioner at the time of application:*

1. Proof that the external review organization has been certified or accredited as an external review organization by an accrediting body that is nationally recognized;

2. A copy of the certification or accreditation standards of the accrediting body;

3. A copy of the most recent review of the external review organization conducted by the accrediting body;

4. A copy of the schedule of fees that the external review organization will charge to conduct an external review; and

5. The fee required pursuant to section 6 of this regulation for the initial issuance of a certificate to conduct external reviews.

Sec. 4. *Except as otherwise provided in section 7 of this regulation, if an external review organization applying for the initial issuance of a certificate to conduct external reviews submits the application and accompanying materials required pursuant to section 2 or 3 of*

this regulation, the Commissioner will issue to the applicant a certificate to conduct external reviews.

Sec. 5. 1. *In accordance with section 3 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330, a certificate to conduct external reviews expires 1 year after the date the certificate is issued by the Commissioner.*

2. Except as otherwise provided in section 7 of this regulation, the Commissioner will issue a renewal of a certificate to conduct external reviews if the external review organization submits to the Commissioner:

(a) On a form prescribed by the Commissioner, an application in writing for the renewal of the certificate to conduct external reviews;

(b) A copy of the schedule of fees that the external review organization will charge to conduct an external review; and

(c) The fee required pursuant to section 6 of this regulation for the renewal of a certificate to conduct external reviews.

Sec. 6. *The Commissioner will charge and collect:*

1. Except as otherwise provided in subsection 2, from an external review organization submitting an application for the initial issuance of a certificate to conduct external reviews pursuant to section 2 or 3 of this regulation, a fee of \$400.

2. From an external review organization submitting an application for:

(a) The initial issuance of a certificate to conduct external reviews pursuant to section 2 or 3 of this regulation; and

(b) The initial issuance of a certificate to conduct external reviews pursuant to section 2 of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at page 772, and the regulations adopted pursuant thereto, a fee of \$600.

3. From an external review organization submitting an application for the renewal of a certificate to conduct external reviews pursuant to section 5 of this regulation, a fee of \$100.

Sec. 7. 1. *The Commissioner may refuse to issue or renew, or may suspend or revoke, a certificate to conduct external reviews if the Commissioner determines that an external review organization:*

(a) Has violated the provisions of section 3 or 5 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330, or sections 2 to 9, inclusive, of this regulation;

(b) Has had a license, certificate or registration to operate as an external review organization denied for cause, suspended or revoked by any other state; or

(c) Has misrepresented facts on an application submitted to the Commissioner for the issuance or renewal of a certificate to conduct external reviews.

2. If the Commissioner refuses to renew, revokes or suspends a certificate to conduct external reviews, the external review organization shall surrender the certificate to the Commissioner.

Sec. 8. *An external review organization issued a certificate to conduct external reviews by the Commissioner pursuant to section 3 of this regulation shall:*

1. Notify the Commissioner if the accrediting body revokes, suspends or otherwise terminates the certification or accreditation of the external review organization; and

2. Provide to the Commissioner a copy of the findings of any review of the external review organization conducted by the accrediting body.

Sec. 9. *The fees an external review organization issued a certificate to conduct external reviews may charge to conduct external reviews:*

- 1. Must be reasonable;*
- 2. Must not exceed the fees set forth in the schedule of fees submitted by the external review organization to the Commissioner pursuant to section 2, 3 or 5 of this regulation; and*
- 3. Must comply with all applicable statutes and regulations.*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R127-03

The Commissioner of Insurance adopted regulations assigned LCB File No. R127-03 which pertain to chapter 616A of the Nevada Administrative Code on December 3, 2003.

Notice date: 9/2/2003
Hearing date: 10/2/2003

Date of adoption by agency: 12/3/2003
Filing date: 12/16/2003

INFORMATIONAL STATEMENT

A hearing was held on October 2, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, regarding the adoption of the regulation regarding the certification of external review organizations for industrial insurance.

Public comment was solicited by posting notice of the hearing in the following public locations: 788 Fairview Drive, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Clark County Library, Capitol Press Room and the Division's Las Vegas Office.

In addition, the Department of Business and Industry, Division of Insurance (Division), maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The hearing was attended by 22 people. Oral testimony in the form of recommended changes was provided by one person at the hearing; no written comments were received.

There were several revisions recommended and made to the Proposed Regulation of the Commissioner of Insurance, LCB File No. R127-03, dated September 26, 2003. A marked-up version of the revised regulation is attached. The revisions pertain to submission of a fee schedule, a requirement that the fees be reasonable and in accordance with the filed fee schedule, and not more than a fee schedule for external review charges established by the Division of Industrial Relations, should such a schedule be established. The Commissioner has issued an order adopting the regulation, as revised pursuant to the workshop and hearing, as a permanent regulation of the Division.

Based upon the testimony received at the hearing, the proposed regulation is revised as follows:

1. Subsection 1 of section 2 is amended to read as follows:
 1. A written statement that identifies:
 - (a) The number of external reviewers that the external review organization employs, contracts with or otherwise retains to conduct external reviews;
 - (b) The specialty of each external reviewer; ~~and~~
 - (c) Whether each external reviewer is certified by the entity that regulates his specialty~~;~~; and
 - (d) The schedule of fees charged for external reviews.
2. Subsection 3 of section 3 is amended to read as follows:
 3. A copy of the most recent review of the external review organization conducted by the accrediting body; ~~and~~
3. A new subsection 4 of section 3 has been added to read as follows:
 4. The schedule of fees charged for external reviews; and
4. Subsection 4 of section 3 is renumbered as subsection 5.
5. Subsection 2 of section 5 is amended to read as follows:
 2. Except as otherwise provided in section 7 of this regulation, the Commissioner will issue a renewal of a certificate to conduct external reviews if the external review organization submits to the Commissioner:
 - (a) On a form prescribed by the Commissioner, an application in writing for the renewal of the certificate to conduct external reviews; ~~and~~
 - (b) The fee required pursuant to section 6 of this regulation for the renewal of a certificate to conduct external reviews~~;~~; and
 - (c) The schedule of fees charged for external reviews.
6. A new subsection 2 of section 6 has been added to read as follows:
 2. If initial application includes a request for certification under chapter 683A of NAC, the fee will be \$600.
7. Subsection 2 of section 6 is renumbered as subsection 3.
8. Section 9 has been added to read as follows:
 9. An external review organization issued a certificate to conduct external reviews by the Commissioner pursuant to this regulation shall:
 1. Charge fees that are reasonable and in accordance with the schedule of fees provided under paragraph (d) of subsection 1 of section 2, subsection 4 of section 3 or paragraph (c) of subsection 2 of section 5; and

2. Limit fees to no more than those established by any schedule of the Division of Industrial Relations.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: Each external review organization will be charged \$400 to be certified as an external review organization for industrial insurance or \$600 to be certified as an external review organization for both industrial insurance and health insurance pursuant to R128-03 if applications are made concurrently. Certification is valid for one year. The organization will be charged \$100 per annum for subsequent renewals.
- (b) On the public: The regulation will have a negligible economic impact on the public.

The Division anticipates that the fees charged will cover the cost to administer the certification process.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. **03.694**
LCB File No. R127-03

**REGULATION FOR CERTIFICATION
OF EXTERNAL REVIEW ORGANIZATIONS
FOR INDUSTRIAL INSURANCE.** /

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation relating to the certification of external review organizations for industrial insurance was held before Alice A. Molasky-Arman, Commissioner of Insurance, on October 2, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before Commissioner Molasky-Arman on October 2, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130 and sections 3 and 5 of Senate Bill No. 320 (SB 320) of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at page 2330.

The Department of Business and Industry, Division of Insurance (Division) received no oral or written comments before the workshop. The hearing was attended by 22 individuals. The following persons provided testimony before the Hearing Officer: Janice Moskowitz, representing the Division; and Robert Ostrovsky, representing Employers Insurance Company of Nevada.

Janice Moskowitz testified that the intent of the regulation was to prescribe the manner in which external review organizations become certified. This is in accordance with SB 320 of the 72nd Session of the Nevada Legislature.

Mr. Ostrovsky requested several amendments to the proposed regulation. The amendments concerned adding a requirement that the organization file its fee schedule, that fees be reasonable and not be more than those allowed under a fee schedule established by the Division of Industrial Relations (DIR) should DIR establish a schedule pertaining to external review organization charges. Mr. Ostrovsky also requested an amendment to allow for certification as an external review organization under both this regulation and R128-03 (health insurance) for a fee that was less than the sum of the two individual fees if the applications were submitted concurrently. Mr. Ostrovsky suggested a fee of \$600.

The Hearing Officer asked Ms. Moskowitz to amend the regulation as per Mr. Ostrovsky's suggested changes.

Based upon the testimony received at the hearing, the proposed regulation is revised as follows:

1. Subsection 1 of section 2 is amended to read as follows:
 1. A written statement that identifies:
 - (a) The number of external reviewers that the external review organization employs, contracts with or otherwise retains to conduct external reviews;
 - (b) The specialty of each external reviewer; ~~and~~
 - (c) Whether each external reviewer is certified by the entity that regulates his specialty~~;~~ *and*
 - (d) *The schedule of fees charged for external reviews.*
2. Subsection 3 of section 3 is amended to read as follows:
 3. A copy of the most recent review of the external review organization conducted by the accrediting body; ~~and~~
3. A new subsection 4 of section 3 has been added to read as follows:
 4. *The schedule of fees charged for external reviews; and*
4. Subsection 4 of section 3 is renumbered as *subsection 5*.

5. Subsection 2 of section 5 is amended to read as follows:

2. Except as otherwise provided in section 7 of this regulation, the Commissioner will issue a renewal of a certificate to conduct external reviews if the external review organization submits to the Commissioner:

(a) On a form prescribed by the Commissioner, an application in writing for the renewal of the certificate to conduct external reviews; ~~and~~

(b) The fee required pursuant to section 6 of this regulation for the renewal of a certificate to conduct external reviews~~;~~; *and*

(c) The schedule of fees charged for external reviews.

6. A new subsection 2 of section 6 has been added to read as follows:

2. If initial application includes a request for certification under chapter 683A of NAC, the fee will be \$600.

7. Subsection 2 of section 6 is renumbered as *subsection 3*.

8. Section 9 has been added to read as follows:

9. An external review organization issued a certificate to conduct external reviews by the Commissioner pursuant to this regulation shall:

1. Charge fees that are reasonable and in accordance with the schedule of fees provided under paragraph (d) of subsection 1 of section 2, subsection 4 of section 3 or paragraph (c) of subsection 2 of section 5; and

2. Limit fees to no more than those established by any schedule of the Division of Industrial Relations.

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation concerning certification of external review organizations for industrial insurance,

LCB File No. R127-03, as amended during the workshop and hearing, be adopted as a permanent regulation of the Division.

SO ORDERED this _____ day of _____, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance