

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R128-03

Effective February 12, 2004

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

AUTHORITY: §§1-9, NRS 679B.130 and section 2 of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at page 772 (NRS 683A.371).

Section 1. Chapter 683A 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 the external review organization conducts its activities in accordance with sections 21 to 28, inclusive, of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at pages 780 to 783, inclusive (NRS 695G.241 to 695G.310, inclusive);

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

(c) Ensure that a determination submitted for external review is a final adverse determination;

(d) Ensure that a final review is conducted in a timely manner in accordance with sections 22, 23 and 24 of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at pages 780 and 781 (NRS 695G.251, 695G.261 and 695G.271);

(e) 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 subsection 4 of section 2 of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at page 772 (NRS 683A.371); and

(f) Submit a copy of the determination regarding an external review to:

(1) The insured;

(2) The physician of the insured;

(3) The authorized representative of the insured, if any; and

(4) The managed care organization.

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 21 to 28, inclusive, of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at pages 780 to 783, inclusive (NRS 695G.241 to 695G.310, inclusive);

(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 subsection 4 of section 2 of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at page 772 (NRS 683A.371); and

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

(1) A health care plan; or

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

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

Sec. 5. *1. In accordance with section 2 of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at page 772 (NRS 683A.371), 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; and

(b) 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 sections 3 and 5 of Senate Bill No. 320 of the 72nd Session of the Nevada Legislature, chapter 395, Statutes of Nevada 2003, at pages 2330 and 2332 (NRS 616A.469 and 616C.363), 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 sections 21 to 28, inclusive, of Assembly Bill No. 79 of the 72nd Session of the Nevada Legislature, chapter 138, Statutes of Nevada 2003, at pages 780 to 783, inclusive (NRS 695G.241 to 695G.310, inclusive) 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 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 must be reasonable.*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R128-03

The Commissioner of Insurance adopted regulations assigned LCB File No. R128-03 which pertain to chapter 683A of the Nevada Administrative Code on January 5, 2004.

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

Date of adoption by agency: 1/5/2004
Filing date: 2/12/2004

INFORMATIONAL STATEMENT

A workshop and hearing was held on October 2, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, concerning the adoption of the regulation regarding the certification of external review organizations for health 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 information 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 was provided by several persons at the hearing; no written comments were received.

Oral testimony resulted in several recommended revisions made to the Proposed Regulation of the Commissioner of Insurance, LCB File No. R128-03, dated September 30, 2003. The revision to the regulation is attached. The revisions pertain to the requirement for submission of a fee schedule, a requirement that the fees charged by the external review organization be reasonable and a reduced application fee for an external review organization that applies for certification as both a health and workers' compensation external review organization. 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. A new subsection 2 of section 6 has been added to read as follows:

2. If the initial application includes a request for certification under chapter 616A of NAC, the fee will be \$600.

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

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

1. The fees charged by an external review organization for conducting external reviews must be reasonable.

The economic impact of the regulation is as follows:

(a) On the business it is to regulate:

Each external review organization will be charged a fee of \$400 for the initial certification. If an applicant applies on the same application for certification as both a workers' compensation and health insurance external review organization, the fee will be \$600. Certification is valid for one year. The organization will be charged \$100 per year to renew its certification.

(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 THE

CAUSE NO. **03.733**
LCB File No. R181-03

**REGULATION CONCERNING THE
MEDICAL DENTAL SCREENING PANEL.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by NRS 233B.061, on the proposed regulation concerning the Medical Dental Screening Panel (MDSP), amending chapter 41A of the Nevada Administrative Code (NAC), was held before Alice A. Molasky-Arman, Commissioner of Insurance, on November 18, 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 November 18, 2003, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada.

The Department of Business and Industry, Division of Insurance (Division) received no written comments from the public. The hearing was attended by 14 individuals. The following person provided testimony before the Hearing Officer: Don Aimar, representing the Division. Mr. Aimar, Insurance Counsel for the Division, testified at the hearing that the proposed regulation would appeal all existing sections of chapter 41A of the NAC dealing with procedures before the MDSP. In 2002, the MDSP was abolished by the 18th Special Session of the Nevada Legislature.

The regulation was not changed as a result of the hearing.

Following a review of the record, the applicable statutes and the testimony received at the hearing, the Commissioner finds that the regulation should be adopted.

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Mr. Kim testified that he would like to see a provision that the external review organization's fees be reasonable. Mr. Hillerby testified he agreed with Mr. Kim on a provision for the reasonableness of fees. Ms. Martin testified that she was concerned about how the Division would determine if a fee was reasonable. Mr. Ostrovsky suggested that every external review organization provide their fee schedule upon application as a solution. Mr. Ostrovsky also inquired on whether a bonding requirement should be added to the proposed regulation. The Hearing Officer agreed to obtain information on the necessity of a bond for possible amendment to the regulation in the future. The hearing was reopened for an amendment suggested by Mr. Ostrovsky during the hearing on LCB File No. R127-03 to allow an external review organization which applies for certification under both this regulation (health) and R127-03 (workers' compensation insurance) to pay 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. Thurner to amend the regulation per the 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~~; *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. A new subsection 2 of section 6 has been added to read as follows:
 2. *If the initial application includes a request for certification under chapter 616A of NAC, the fee will be \$600.*
6. Subsection 2 of section 6 is renumbered as **subsection 3**.
7. Section 9 has been added to read as follows:
 1. *The fees charged by an external review organization for conducting external reviews must be reasonable.*

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 health insurance, LCB File No. R128-03, as amended during the workshop and hearing, be adopted as a permanent regulation of the Division.

SO ORDERED this day of December, 2003

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance