

**PROPOSED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R074-13

October 3, 2013

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

AUTHORITY: §§1-42, NRS 679B.130 and section 25 of Assembly Bill No. 425, chapter 541, Statutes of Nevada 2013, at page 3596 (NRS 695J.270).

A REGULATION relating to health insurance; establishing procedures for the certification of exchange enrollment facilitators; establishing duties for exchange enrollment facilitators; and providing other matters properly relating thereto.

Section 1. Chapter 695J of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 42, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Commissioner” means the Commissioner of Insurance.*

Sec. 4. *“Course” includes, but is not limited to, a program of instruction, correspondence course, course of independent study, self-study course or seminar.*

Sec. 5. *“Designated representative” means a person with whom the Commissioner contracts pursuant to section 10 of this regulation.*

Sec. 6. *“Division” means the Division of Insurance of the Department of Business and Industry.*

Sec. 7. *“Instructor” means the person who will be responsible for teaching the material of the course to the participants of the course. The instructor may be, but is not required to be, the same person as the sponsor.*

Sec. 8. *“Sponsor” means the person seeking approval for a course of instruction pursuant to section 12 of this regulation.*

Sec. 9. *“Unsuitable person” has the meaning ascribed to it in NAC 679B.039.*

Sec. 10. *The Commissioner may contract with a person outside the Division to perform all or part of the administrative duties associated with precertification, certification or continuing education programs, subject to the direction and approval of the Commissioner.*

Sec. 11. *In addition to the requirements of sections 2 to 28, inclusive, of Assembly Bill No. 425, chapter 541, Statutes of Nevada 2013, at pages 3590-96 (chapter 695J of NRS), an applicant for a certificate as an exchange enrollment facilitator must complete, with a final grade of at least 70 percent, a precertification course of instruction approved by the Commissioner. The precertification course must have been completed within 1 year immediately preceding the date of the application for the certificate.*

Sec. 12. 1. *A precertification course of instruction and the instructor for the precertification course must be approved by the Division before the precertification course is offered to a prospective applicant for a certificate as an exchange enrollment facilitator. The sponsor of the precertification course must 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 11 to 19, 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 11 to 19, inclusive, of this regulation.

3. An approved precertification course must not have more than 8 hours of instruction in the classroom each day.

Sec. 13. 1. An instructor must:

(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. Not more than one-third of any precertification course approved by the Division may be taught by:

(a) A person 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 software which presents a slideshow video or audio recordings transmitted via the Internet and other similar methods of communication.*

Sec. 14. 1. *A correspondence, extension or self-study precertification course may be approved by the Division if:*

(a) The precertification course satisfies all the requirements of sections 11 to 19, 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 must 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. 15. 1. *A precertification course must 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 thereto, at least one-half of which must 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 14 of this regulation if a correspondence, extension or self-study precertification course meets the requirements of subsection 1.

Sec. 16. *1. Each sponsor of a precertification course shall maintain a complete record of each person attending the precertification course. The record must:*

- (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 not less than 4 years.*

2. Each sponsor of a precertification course shall submit quarterly to the Division for each precertification course offered, the name of 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 must 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 a certificate as an exchange enrollment facilitator must submit the certificate of completion with his or her application for a certificate as an exchange enrollment facilitator.

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. 17. *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 must be approved by the Division before the precertification course may be 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 chapter and chapter 695J of NRS.

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. 18. *1. The Commissioner will refuse to issue a certificate as an exchange enrollment facilitator to, or will suspend or revoke the certificate of, any person who knowingly submits to the Division a false or fraudulent certificate of completion of a course of instruction.*

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 a course of instruction;

(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 revoked pursuant to this section for at least 1 year after the approval of the sponsor or instructor was revoked.

4. The Commissioner may suspend or revoke the approval of any sponsor or instructor whom the Commissioner has determined is an unsuitable person.

Sec. 19. Every application, certificate or other form required to be filed with the Division pursuant to sections 11 to 19, inclusive, of this regulation must be on a form provided by the Division.

Sec. 20. Pursuant to sections 9, 11 and 25 of Assembly Bill No. 425, chapter 541, Statutes of Nevada 2013, at pages 3590, 3592 and 3596, respectively (NRS 695J.110, 695J.130 and 695J.270), an applicant for a certificate as an exchange enrollment facilitator must pass a written examination and pay a fee for the administration of the examination. The examination fee:

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

Sec. 21. An applicant for a certificate as an exchange enrollment facilitator must attain an adjusted score of 80 or more points on the appropriate certification examination to pass the examination. The examination must have been successfully completed within 1 year immediately preceding the date of application for the certificate.

Sec. 22. 1. The Commissioner may issue a certificate as an exchange enrollment facilitator before the criminal background search of the applicant conducted pursuant to section 10 of Assembly Bill No. 425, chapter 541, Statutes of Nevada at page 3591 (NRS 695J.120), is completed if the applicant:

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

(b) Has complied with the procedures required pursuant to section 10 of Assembly Bill No. 425, chapter 541, Statutes of Nevada at page 3591 (NRS 695J.120).

2. The Commissioner may contract with a person outside the Division to process the fingerprints submitted pursuant to section 10 of Assembly Bill No. 425, chapter 541, Statutes of Nevada at page 3591 (NRS 695J.120), so that the fingerprints may be electronically transmitted to the Central Repository for Nevada Records of Criminal History or another law enforcement agency.

Sec. 23. To renew a certificate as an exchange enrollment facilitator, each certificate holder must certify that he or she has successfully completed 30 hours of approved continuing education within the 3-year period before the date of renewal. Three of the 30 hours of approved continuing education must be in a subject of ethics. The hours of continuing education must be related to the business of facilitating enrollment in qualified health plans.

Sec. 24. 1. Any person who requests approval for a course of continuing education shall furnish to the Commissioner or to a designated representative thereof at least 60 days before the beginning of the course:

(a) An outline of the subject matter;

(b) The method of presentation;

(c) The qualifications of the instructor;

(d) The number of classroom hours or, if for a correspondence course, a self-study course or an on-line computer course, the equivalent of classroom hours, and a written procedure for conducting a supervised final examination;

- (e) Any applicable fee established and required by the Commissioner; and*
- (f) Any other information required by the Commissioner or a designated representative.*

2. Submission of the information required by subsection 1 must be on an application approved by the Commissioner.

3. The course must be designed to increase the knowledge and understanding of the certificate holder of:

- (a) Principles and coverage of insurance and public assistance programs;*
- (b) Applicable laws, rules and regulations concerning insurance and public assistance programs;*
- (c) Recent changes in coverages; and*
- (d) The duties, ethics and responsibilities of the certificate holder.*

4. The Commissioner or a designated representative will not approve a course that:

(a) Is provided by a producer of insurance or an agency licensed to sell insurance in this State unless the producer of insurance or agency is a trade association of the insurance industry; or

(b) Teaches:

- (1) Precertification training;*
- (2) Motivation or psychology;*
- (3) Marketing;*
- (4) Prospecting;*
- (5) Recruiting;*
- (6) Sales;*
- (7) Computer applications that are unrelated to insurance;*

(8) Skills for communication; or

(9) The management of personnel or of an office.

↪ The provisions of this subsection do not limit the authority of the Commissioner or a designated representative to refuse to approve a course of noncompliance with any other provision of sections 23 to 32, inclusive, of this regulation.

5. The Commissioner or a designated representative will not approve a course if the total number of classroom hours is less than 1 hour. One hour of credit will be awarded for each 50 minutes of instruction, or the equivalent in self-study approved pursuant to section 14 of this regulation.

6. The Commissioner or a designated representative will grant or deny approval of each course in writing within 60 days after receiving the information required pursuant to subsection 1.

7. Any material change in the content of a course approved by the Commissioner or a designated representative must be submitted for approval before presentation of the course.

8. A course that has been approved by the Commissioner or a designated representative is not required to be approved for any subsequent presentation of the course, except that the provider of the course shall submit a notice to the Commissioner or a designated representative, not later than 30 days before the course is offered, that includes the following information:

(a) The name and number of the course;

(b) The name of the instructor of the course;

(c) The place where the course will be offered; and

(d) The date and time when the course will be offered.

Sec. 25. 1. *A course of continuing education must not be advertised unless the Commissioner or a designated representative has approved the course in writing.*

2. Any advertisement of an approved course of continuing education must contain:

(a) The title of the course;

(b) The name and address of the person approved to provide the course;

(c) The fact that the course has been approved for exchange enrollment facilitators;

(d) The number of hours of credit for continuing education for which the course has been approved; and

(e) A brief summary or outline of the contents of the course.

Sec. 26. *The provider of a course of continuing education approved by the Commissioner or a designated representative thereof shall:*

1. Provide a certificate of completion to each person who successfully completes the course. The certificate must be on a form approved by the Commissioner.

2. Maintain records of attendance and examination scores for not less than 4 years.

3. Make these records and scores available to the Division upon request.

4. Not employ an unsuitable person as an instructor for the course.

Sec. 27. *An exchange enrollment facilitator who is seeking approval for hours of continuing education after completing a course organized by and conducted with the supervision of a trade association of the insurance industry or a national association of agents and brokers that was not approved by the Commissioner or a designated representative must:*

1. Request approval of the hours from the Commissioner or a designated representative;

2. Submit the information required by subsection 1 of section 24 of this regulation; and

3. *Submit a document signed by the instructor or provider of the course which verifies the attendance of the exchange enrollment facilitator and his or her successful completion of each portion of the course for which credit is sought.*

Sec. 28. 1. *The following courses are approved for continuing education for the hours set forth below:*

(a) *The health insurance curriculum of the Life Underwriter Training Council, 25 hours.*

(b) *Any part of the educational program of the Health Insurance Association of America, 15 hours for each part.*

(c) *Any part of the curriculum of the National Association of Health Underwriters, 25 hours for each part.*

(d) *Any course relating to health insurance taught by an accredited college or university, 10 hours for each unit of credit awarded by the college or university.*

2. *To receive the credit set forth in subsection 1, an exchange enrollment facilitator must:*

(a) *Receive a passing grade on the final examination if the course is a self-study course; or*

(b) *Attend all classes of the course if attendance is required for the course.*

3. *An exchange enrollment facilitator who teaches an approved course may receive credit for continuing education for the number of hours that would be granted to an exchange enrollment facilitator taking and successfully completing the course. An exchange enrollment facilitator will receive credit in this manner only once during a renewal period for each course taught.*

Sec. 29. *An exchange enrollment facilitator:*

1. *May receive credit for continuing education only once during a renewal period for each course taken.*

2. May not carry forward to the next renewal period any hours of continuing education that are accumulated during a renewal period in excess of the hours required pursuant to section 23 of this regulation.

Sec. 30. *1. Each exchange enrollment facilitator shall furnish to the Division upon the renewal of his or her certificate or upon the request of the Division, the original certificate of completion issued by the provider for each course of continuing education.*

2. The exchange enrollment facilitator shall keep a copy of each certificate of completion for not less than 4 years after the completion of the course.

3. Failure to provide verification of continuing education credits upon request by the Division is evidence that the exchange enrollment facilitator did not complete the required continuing education.

Sec. 31. *1. The Commissioner or a designated representative thereof may suspend or revoke the approval of a course if he or she determines that:*

(a) The content of the course has been changed without notice to the Commissioner or designated representative and the change affects the number of hours of credit assigned to the course;

(b) A certificate of completion has been issued and hours credited to a person who has not completed the course;

(c) A certificate of completion has not been issued and hours have not been credited when requested to a person who has successfully completed the course;

(d) The quality of instruction is inadequate;

(e) The content of the course does not meet the objectives of subsection 3 of section 24 of this regulation;

(f) The provider has not maintained the records required by subsection 2 of section 26 of this regulation; or

(g) The provider has employed an unsuitable person as an instructor for the course.

2. The Commissioner or a designated representative may audit a course to ensure that the content or instructor meets the requirements of section 24 of this regulation.

3. If approval of a course is suspended or revoked by the Commissioner or a designated representative, approval may be reinstated at the discretion of the Commissioner or a designated representative and after the Commissioner or designated representative receives proof that the conditions giving rise to the suspension or revocation have been corrected.

Sec. 32. 1. The Division shall not:

(a) Renew the certificate of an exchange enrollment facilitator who fails to comply with the requirements of sections 23 to 32, inclusive, of this regulation; or

(b) Issue a certificate to an applicant until he or she complies with the requirements of sections 23 to 32, inclusive, of this regulation.

2. Any person who submits a false or fraudulent affidavit that certifies his or her compliance with the requirements of sections 23 to 32, inclusive, of this regulation shall be deemed to have:

(a) Violated a regulation for the purposes of subsection 2 of NRS 683A.451;

(b) Made a material misrepresentation in application for a license for the purposes of subsection 1 or 3 of NRS 683A.451; and

(c) Proven himself or herself untrustworthy for the purposes of subsection 8 of NRS 683A.451.

Sec. 33. As used in sections 33 to 42, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 34 to 39, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 34. “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.

Sec. 35. “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. 36. “Compensation” means consideration in any form for the production of insurance received by an exchange enrollment facilitator from any source.

Sec. 37. “Control” has the meaning ascribed to it in NRS 692C.050.

Sec. 38. “Represents” means to act on behalf of or in conjunction with a client in relation to an insurance transaction or potential insurance transaction.

Sec. 39. “Transaction” has the meaning ascribed to the term “transact” as defined in NRS 679A.130. The term includes:

- 1. The facilitation of 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 and their coverage, terms, duration, premiums and premium payment arrangements.*

Sec. 40. The duties imposed on an exchange enrollment facilitator in section 41 of this regulation:

- 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 Code or the common law of agency as recognized in this State.

Sec. 41. *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 must 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 must be documented by the

exchange enrollment facilitator at the time of the transaction and followed by a documented acknowledgment by the client and the exchange enrollment facilitator.

3. Shall, before a client's purchase of insurance, disclose to the client all health benefit plans, contracts providing coverage for dental care and programs of public assistance for which the client has been determined to be eligible by means of an eligibility determination made by the Exchange.

4. Shall, before a client's purchase of insurance, disclose to the client that additional health benefit plans and contracts providing coverage for dental care may be available for purchase outside of the Exchange without an advance payment of the federal income tax credit for payment of eligible premiums.

Sec. 42. *A violation of any provision of section 41 is:*

1. An unfair method of competition or an unfair or deceptive act or practice in the business of insurance in violation of NRS 686A.020.

2. A cause for disciplinary action pursuant to section 22 of Assembly Bill No. 425, chapter 541, Statutes of Nevada 2013, at page 3595 (NRS 695J.240).