

**ADOPTED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R132-13**

Effective October 1, 2014

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

AUTHORITY: §§1-38, NRS 679B.130 and 681B.290.

A REGULATION relating to insurance; defining certain health organizations; requiring health organizations to maintain a capital account with a net worth in an amount which is not less than the amount of risk-based capital; revising provisions concerning the formula set forth in the instructions relating to risk-based capital; revising various provisions applicable to risk-based capital insurers to also apply to health organizations; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing regulations establish various provisions relating to risk-based capital of insurers. (NAC 681B.400-681B.595) **Sections 2-4** of this regulation define the terms “domestic health organization,” “foreign health organization” and “health organization.” **Sections 8 and 9** of this regulation revise the definition of the terms “life and health insurer” and “property and casualty insurer.” (NAC 681B.440, 681B.455) **Sections 6, 7, 10, 11 and 14-35** of this regulation make various requirements relating to risk-based capital that are applicable to insurers also applicable to health organizations. (NAC 681B.415, 681B.435, 681B.470, 681B.475, 681B.490-681B.595)

Existing regulations require an insurer to complete a report on risk-based capital in accordance with the formula set forth in the instructions relating to risk-based capital adopted by the National Association of Insurance Commissioners. (NAC 681B.480) **Section 12** of this regulation requires certain health organizations to complete such a report. **Section 12** also: (1) identifies the various formulas in accordance with which an insurer’s level of risk-based capital must be determined; (2) identifies the formula in accordance with which a health organization’s level of risk-based capital must be determined; and (3) requires the formula used by an insurer or health organization to take into account and adjust for the covariance between certain factors.

Existing regulations require the Commissioner of Insurance to adjust any report on risk-based capital that, in his or her judgment, is inaccurate and to notify the insurer of the adjustment. (NAC 681B.485) **Section 13** of this regulation applies these requirements to a health organization’s report on risk-based capital. **Section 13** also requires the Commissioner to provide a statement of the reason for the adjustment in the notice to the insurer or health organization.

Existing regulations identify the circumstances that constitute events which require company action by certain insurers. **Section 14** of this regulation identifies additional circumstances that constitute events which require company action by an insurer or a health organization.

**Sections 36 and 37** of this regulation require fraternal benefit societies and nonprofit corporations to maintain a capital account with a net worth in an amount which is not less than the amount of risk-based capital determined pursuant to applicable statutes and regulations.

**Section 1.** Chapter 681B of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *“Domestic health organization” means a health organization domiciled in this State.*

**Sec. 3.** *“Foreign health organization” means a health organization that is licensed to do business in this State but is not domiciled in this State.*

**Sec. 4.** *“Health organization” means:*

*1. A nonprofit corporation for hospital, medical or dental services that is certified pursuant to chapter 695B of NRS;*

*2. A health maintenance organization that is certified pursuant to chapter 695C of NRS;*

*3. An organization for dental care that is certified pursuant to chapter 695D of NRS;*

*4. A prepaid limited health service organization, hospital, medical and dental indemnity or service operation, or other managed care organization, that is certified pursuant to chapter 695F of NRS; or*

*5. Any organization not described in subsection 1, 2, 3 or 4 and which is required to file a health annual statement, as that term is used in the Annual Statement Instructions adopted by the National Association of Insurance Commissioners, in accordance with the Division’s filing requirements for the applicable reporting year.*

↪ *The term does not include an organization which is authorized as a life and health insurer or a property and casualty insurer pursuant to chapter 680A of NRS or a fraternal benefit society, as defined in NRS 695A.010, and which is required to prepare and submit a report of the level of risk-based capital of the insurer pursuant to NRS 681B.290.*

**Sec. 5.** NAC 681B.400 is hereby amended to read as follows:

681B.400 As used in NAC 681B.400 to 681B.595, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 681B.405 to 681B.470, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 6.** NAC 681B.415 is hereby amended to read as follows:

681B.415 “Corrective order” means an order issued by the Commissioner that specifies the corrective actions which the Commissioner has determined are necessary to correct a problem relating to the level of risk-based capital of an insurer ~~+~~ *or health organization.*

**Sec. 7.** NAC 681B.435 is hereby amended to read as follows:

681B.435 “Level of risk-based capital” means the level of risk-based capital of an insurer *or health organization* that is calculated pursuant to the instructions relating to risk-based capital.

**Sec. 8.** NAC 681B.440 is hereby amended to read as follows:

681B.440 “Life and health insurer” includes:

1. A domestic or foreign insurer authorized pursuant to chapter 680A of NRS to offer health insurance or life insurance, or both ~~+~~, *and required to file a life, accident and health annual statement, as that term is used in the Annual Statement Instructions for Life and Accident and Health adopted by the National Association of Insurance Commissioners, in accordance with the Division’s filing requirements for the applicable reporting year;* and

2. ~~{A licensed property and casualty insurer that writes only accident and health insurance.}~~

*Any other licensed insurer that is required to file a life, accident and health annual statement, as that term is used in the Annual Statement Instructions for Life and Accident and Health adopted by the National Association of Insurance Commissioners, in accordance with the Division's filing requirements for the applicable reporting year.*

**Sec. 9.** NAC 681B.455 is hereby amended to read as follows:

681B.455 "Property and casualty insurer" means ~~{a}~~ :

1. *A domestic or foreign insurer authorized pursuant to chapter 680A of NRS to offer property or casualty insurance ~~{i}~~ and required to file a property and casualty annual statement, as that term is used in the Annual Statement Instructions for Property and Casualty adopted by the National Association of Insurance Commissioners, in accordance with the Division's filing requirements for the applicable reporting year;*

2. *A risk retention group licensed as a captive insurer pursuant to chapter 694C of NRS;*

*or*

3. *Any other licensed insurer that is required to file a property and casualty annual statement, as that term is used in the Annual Statement Instructions for Property and Casualty adopted by the National Association of Insurance Commissioners, in accordance with the Division's filing requirements for the applicable reporting year.*

↪ The term does not include a monoline mortgage guaranty insurer, financial guaranty insurer, title insurer, or a property and casualty insurer that qualifies as a life and health insurer pursuant to NAC 681B.440.

**Sec. 10.** NAC 681B.470 is hereby amended to read as follows:

681B.470 "Total adjusted capital" means the sum of:

1. An insurer's *or health organization's* statutory capital and surplus as determined in the annual financial statements required to be filed pursuant to NRS 680A.265; and

2. Such other items as the instructions relating to risk-based capital require to be included.

**Sec. 11.** NAC 681B.475 is hereby amended to read as follows:

681B.475 1. A report filed by a domestic or foreign insurer *or health organization* pursuant to NRS 681B.290 , *as amended by section 6 of Assembly Bill No. 435, Statutes of Nevada 2013, at page 3354*, must be in such form and contain such information as is required by the instructions relating to risk-based capital.

2. The insurer *or health organization* shall file its report on risk-based capital with:

(a) The Commissioner;

(b) The National Association of Insurance Commissioners, in accordance with the instructions relating to risk-based capital; and

(c) The Insurance Commissioner or chief regulatory officer for insurance of each state in which the insurer *or health organization* is authorized to do business, if the Insurance Commissioner or chief regulatory officer for insurance of that state requests such a report from the insurer ~~+~~ *or health organization*. Upon receiving such a request, the insurer *or health organization* shall file its report on risk-based capital pursuant to this paragraph not later than 15 days after the date on which it received the request or not later than the filing date set forth by the laws of the requesting state, whichever occurs later.

**Sec. 12.** NAC 681B.480 is hereby amended to read as follows:

681B.480 1. The report on risk-based capital of an insurer *or health organization* must be completed in accordance with the formula set forth in the instructions relating to risk-based capital ~~+~~ *and in accordance with the following provisions:*

*(a) A life and health insurer's level of risk-based capital must be determined in accordance with the formula set forth in the instructions relating to risk-based capital for life and health insurers. The formula must take into account, and may adjust for, the covariance between the following factors, determined in each case by applying the factors in the manner set forth in the instructions relating to risk-based capital for life and health insurers:*

*(1) The risk with respect to the insurer's assets;*

*(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;*

*(3) The interest rate risk with respect to the insurer's business; and*

*(4) All other business risks and any additional relevant risks identified in the instructions relating to risk-based capital for life and health insurers.*

*(b) A property and casualty insurer's level of risk-based capital must be determined in accordance with the formula set forth in the instructions relating to risk-based capital for property and casualty insurers. The formula must take into account, and may adjust for, the covariance between the following factors, determined in each case by applying the factors in the manner set forth in the instructions relating to risk-based capital for property and casualty insurers:*

*(1) Asset risk;*

*(2) Credit risk;*

*(3) Underwriting risk; and*

*(4) All other business risks and any additional relevant risks identified in the instructions relating to risk-based capital for property and casualty insurers.*

*(c) A health organization's level of risk-based capital must be determined in accordance with the formula set forth in the instructions relating to risk-based capital for health organizations. The formula must take into account, and may adjust for, the covariance between the following factors, determined in each case by applying the factors in the manner set forth in the instructions relating to risk-based capital for health organizations:*

*(1) Asset risk;*

*(2) Credit risk;*

*(3) Underwriting risk; and*

*(4) All other business risks and any additional relevant risks identified in the instructions relating to risk-based capital for health organizations.*

*(d) A fraternal benefit society's level of risk-based capital must be determined in accordance with the formula set forth in the instructions relating to risk-based capital for fraternal benefit societies. The formula must take into account, and may adjust for, the covariance between the following factors, determined in each case by applying the factors in the manner set forth in the instructions relating to risk-based capital for fraternal benefit societies:*

*(1) The risk with respect to the assets of the fraternal benefit society;*

*(2) The risk of adverse insurance experience with respect to the liabilities and obligations of the fraternal benefit society;*

*(3) The interest rate risk with respect to the business of the fraternal benefit society; and*

*(4) All other business risks and any additional relevant risks identified in the instructions relating to risk-based capital for fraternal benefit societies.*

*2. In addition to meeting the applicable level of risk-based capital required by this section, an insurer or health organization should maintain an amount of capital in excess of the level of risk-based capital required by this section or any other regulation adopted pursuant to NRS 681B.290, as amended by section 6 of Assembly Bill No. 435, Statutes of Nevada 2013, at page 3354, to avoid various risks inherent in or affecting the business of insurance.*

**Sec. 13.** NAC 681B.485 is hereby amended to read as follows:

681B.485 If an insurer *or health organization* files a report on risk-based capital that, in the judgment of the Commissioner, is inaccurate, the Commissioner will adjust the report on risk-based capital to correct the inaccuracy and notify the insurer *or health organization* of the adjustment. *The notice to the insurer or health organization must contain a statement of the reason for the adjustment.*

**Sec. 14.** NAC 681B.490 is hereby amended to read as follows:

681B.490 1. The following constitute events that require company action:

(a) The filing by an insurer *or health organization* of a report on risk-based capital which indicates that:

(1) The total adjusted capital of the insurer *or health organization* is greater than or equal to its regulatory action level of risk-based capital but less than its company action level of risk-based capital; ~~{or}~~

(2) For a life and health insurer, the total adjusted capital of the insurer has a negative trend and is greater than or equal to its company action level of risk-based capital but less than the product of ~~{2.5}~~ 3 times its authorized control level of risk-based capital; ~~{or}~~

*(3) For a property and casualty insurer, the total adjusted capital is greater than or equal to its company action level risk-based capital but less than the product of 3 times its*



*authorized control level of risk-based capital and triggers the “Trend Test” determined in accordance with the “Trend Test” calculation included in the instructions relating to risk-based capital for property and casualty insurers; or*

*(4) For a health organization, the total adjusted capital is greater than or equal to its company action level risk-based capital but less than the product of 3 times its authorized control level of risk-based capital and triggers the “Trend Test” determined in accordance with the “Trend Test” calculation included in the instructions relating to risk-based capital for health organizations; or*

(b) Notification by the Commissioner to an insurer *or health organization* that the Commissioner has adjusted a report on risk-based capital of the insurer *or health organization* in accordance with NAC 681B.485 and that the adjusted report indicates a situation described in paragraph (a), except that if the insurer *or health organization* challenges the adjustment pursuant to NAC 681B.580, the event that requires company action is the notification by the Commissioner to the insurer *or health organization* that the Commissioner has, after a hearing, rejected the challenge of the insurer ~~†~~ *or health organization*.

2. As used in this section, “negative trend” means a negative trend over a period, as determined in accordance with the “Trend Test” calculation included in the instructions relating to risk-based capital.

**Sec. 15.** NAC 681B.495 is hereby amended to read as follows:

681B.495 1. If an event that requires company action occurs, the insurer *or health organization* shall prepare and submit to the Commissioner a plan for risk-based capital which:

(a) Identifies the conditions that contributed to the event which requires company action.

(b) Contains proposals for corrective actions that the insurer *or health organization* will take which are expected to result in the elimination of the event.

(c) Provides projections for financial results of the insurer ~~†~~ *or health organization*, including projections of new and renewal business, operating income, net income, and capital and surplus, for the current year and at least the next 4 succeeding years, both in the absence of the proposed corrective actions and if the proposed corrective actions are carried out. The projections for both new and renewal business may include separate projections for each major line of business written by the insurer *or health organization* and identify separately each significant component of income, expenses and benefits.

(d) Identifies the key assumptions impacting the projections of the insurer *or health organization* and the sensitivity of those projections to the assumptions made by the insurer ~~†~~ *or health organization*.

(e) Identifies the quality of, and problems associated with, the business of the insurer ~~†~~ *or health organization*, including, but not limited to, its assets, its anticipated business growth and associated strain on its surplus, any extraordinary exposure to risk, its mix of business and its use of reinsurance, if any.

2. The plan for risk-based capital must be submitted not later than 45 days after the date on which the event that requires company action occurs.

**Sec. 16.** NAC 681B.500 is hereby amended to read as follows:

681B.500 1. Not later than 60 days after the date on which an insurer *or health organization* submits a plan for risk-based capital to the Commissioner pursuant to NAC 681B.495 or a revised plan for risk-based capital pursuant to this section, the Commissioner will notify the insurer *or health organization* as to whether the plan or revised plan for risk-based

capital, as appropriate, may be carried out as proposed or whether the plan is unsatisfactory. If the Commissioner determines that the plan or revised plan for risk-based capital is unsatisfactory, the notification will set forth the reasons for that determination and may include proposed revisions which would make the plan or revised plan satisfactory.

2. Upon receiving notification from the Commissioner that its plan or revised plan for risk-based capital is unsatisfactory, the insurer *or health organization* shall prepare a new revised plan, which may incorporate by reference any revision proposed by the Commissioner. The insurer *or health organization* shall submit the new revised plan to the Commissioner not later than 45 days after the date on which the insurer *or health organization* received the notification, except that if, pursuant to NAC 681B.580, the insurer *or health organization* challenges the determination by the Commissioner that the plan is unsatisfactory, the insurer *or health organization* shall submit the new revised plan to the Commissioner not later than 45 days after the date on which the insurer *or health organization* is notified that the Commissioner has, after a hearing, rejected the challenge of the insurer *or health organization*.

3. Subject to the right of the insurer *or health organization* to a hearing pursuant to NAC 681B.580, the Commissioner will, if he or she deems it to be necessary, specify in the notification to an insurer *or health organization* that the plan or revised plan for risk-based capital is unsatisfactory and that the notification constitutes an event which requires regulatory action.

**Sec. 17.** NAC 681B.505 is hereby amended to read as follows:

681B.505 1. Each domestic insurer *or health organization* that files a plan or revised plan for risk-based capital with the Commissioner pursuant to NAC 681B.495 and 681B.500 shall file a copy of the plan or revised plan, as appropriate, with the Insurance Commissioner or chief

regulatory officer for insurance in each state in which the domestic insurer *or health organization* is authorized to do business if:

(a) The Insurance Commissioner or chief regulatory officer for insurance of that state has notified the domestic insurer ~~H~~ *or health organization*, in writing, of his or her request that the domestic insurer *or health organization* file a copy of its plan or revised plan with that Insurance Commissioner or chief regulatory officer for insurance; and

(b) That state has enacted a provision which provides that:

(1) Except as otherwise provided by the laws of that state, information contained in a report on risk-based capital or a plan or revised plan for risk-based capital:

(I) Is confidential and must not be made available to the general public; and

(II) Is not subject to a subpoena other than a subpoena issued by a court of competent jurisdiction, or by the Insurance Commissioner or chief regulatory officer for the sole purpose of enforcing an action taken by the Insurance Commissioner or chief regulatory officer against the insurer *or health organization* pursuant to the laws of that state relating to the regulation of insurance;

(2) The result or report of any examination or analysis of an insurer *or health organization* performed pursuant to the requirements of that state relating to the reporting of risk-based capital and any corrective order issued by the Insurance Commissioner or chief regulatory officer are confidential; and

(3) Any requirement of confidentiality does not apply to any information contained in a report on risk-based capital of an insurer *or health organization* if that information is otherwise included or required to be included in an annual statement of the insurer *or health organization* that is available to the general public.

2. The domestic insurer *or health organization* shall file a copy of its plan or revised plan for risk-based capital, as appropriate, pursuant to this section not later than:

(a) Fifteen days after it receives notice from the Insurance Commissioner or chief regulatory officer for insurance of the requesting state to file a copy of the plan or revised plan for risk-based capital; or

(b) The date on which the plan or revised plan for risk-based capital must be filed in this state pursuant to NAC 681B.495 and 681B.500,

↳ whichever is later.

**Sec. 18.** NAC 681B.510 is hereby amended to read as follows:

681B.510 The following constitute events that require regulatory action:

1. The filing by an insurer *or health organization* of a report on risk-based capital which indicates that the total adjusted capital of the insurer *or health organization* is equal to or greater than its authorized control level of risk-based capital but less than its regulatory action level of risk-based capital;

2. Notification by the Commissioner to an insurer *or health organization* that the Commissioner has adjusted a report on risk-based capital of the insurer *or health organization* in accordance with NAC 681B.485 and that the adjusted report indicates a situation described in subsection 1, except that if the insurer *or health organization* challenges the adjustment pursuant to NAC 681B.580, the event that requires regulatory action is the notification by the Commissioner to the insurer *or health organization* that the Commissioner has, after a hearing, rejected the challenge of the insurer ~~or~~ *or health organization*;

3. Failure of an insurer *or health organization* to file a report on risk-based capital by the filing date, unless the insurer *or health organization* has provided an explanation satisfactory to

the Commissioner for its failure to file the report timely and has cured the failure within 10 days after the prescribed filing date;

4. Failure of an insurer *or health organization* to submit a required plan or revised plan for risk-based capital within the time prescribed in NAC 681B.495 and 681B.500;

5. Notification by the Commissioner to an insurer *or health organization* that a plan or revised plan for risk-based capital submitted pursuant to NAC 681B.495 or 681B.500, as appropriate, is unsatisfactory in the judgment of the Commissioner and that the notification constitutes an event that requires regulatory action, except that if the insurer ~~is~~ *or health organization*, pursuant to NAC 681B.580, challenges the determination of the Commissioner that the plan or revised plan for risk-based capital is unsatisfactory, the event that requires regulatory action is the notification by the Commissioner to the insurer *or health organization* that the Commissioner has, after a hearing, rejected the challenge of the insurer ~~is~~ *or health organization*; or

6. Notification by the Commissioner to an insurer *or health organization* that the Commissioner has determined that the insurer *or health organization* has failed to adhere to its plan or revised plan for risk-based capital submitted pursuant to NAC 681B.495 or 681B.500, as appropriate, and that the failure has had a substantial adverse effect on the ability of the insurer *or health organization* to eliminate the event that requires company action in accordance with its plan or revised plan for risk-based capital, except that if the insurer *or health organization* challenges the determination pursuant to NAC 681B.580, the event that requires regulatory action is the notification by the Commissioner to the insurer *or health organization* that the Commissioner has, after a hearing, rejected the challenge of the insurer ~~is~~ *or health organization*.

**Sec. 19.** NAC 681B.515 is hereby amended to read as follows:

681B.515 If an event that requires regulatory action occurs, the insurer *or health organization* shall prepare and submit to the Commissioner a plan or revised plan for risk-based capital, as appropriate. The plan or revised plan for risk-based capital must be submitted not later than 45 days after the date on which the event that requires regulatory action occurred.

**Sec. 20.** NAC 681B.520 is hereby amended to read as follows:

681B.520 1. If an event that requires regulatory action occurs, the Commissioner will:

(a) Perform such examinations and analyses of the assets, liabilities and operations of the insurer ~~H~~ *or health organization*, including a review of the plan or revised plan for risk-based capital of the insurer ~~H~~ *or health organization*, as he or she determines are necessary; and

(b) If the Commissioner performs an examination or analysis pursuant to paragraph (a) and determines that corrective action is necessary, issue a corrective order that specifies such corrective action as he or she determines is necessary.

2. In determining whether any corrective action is necessary, the Commissioner will take into account such factors with respect to the insurer *or health organization* as the Commissioner determines are relevant, based on the examination or analysis, or both, conducted by the Commissioner of the assets, liabilities and operation of the insurer ~~H~~ *or health organization*, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the instructions relating to risk-based capital.

**Sec. 21.** NAC 681B.525 is hereby amended to read as follows:

681B.525 1. The Commissioner will retain such actuaries, investment experts and other consultants as he or she determines are necessary to:

(a) Review the plan or revised plan for risk-based capital, as appropriate, submitted by the insurer *or health organization* pursuant to NAC 681B.515 after the occurrence of an event that requires regulatory action;

(b) Examine or analyze the assets, liabilities and operations of the insurer ~~+~~ *or health organization*; and

(c) Formulate the necessary corrective actions that need to be included in a corrective order, if any.

2. The reasonable fees, costs and expenses relating to the retention of actuaries, investment experts and other consultants must be paid by the insurer *or health organization* under examination and by any person referred to in subsection 1, 2, ~~+~~ 5 *or* 6 of NRS 679B.240 who is associated with the insurer ~~+~~ *or health organization*, as directed by the Commissioner.

**Sec. 22.** NAC 681B.530 is hereby amended to read as follows:

681B.530 The following constitute events that require authorized control:

1. The filing by an insurer *or health organization* of a report on risk-based capital which indicates that the total adjusted capital of the insurer *or health organization* is equal to or greater than its mandatory control level of risk-based capital but less than its authorized control level of risk-based capital;

2. Notification by the Commissioner to an insurer *or health organization* that the Commissioner has adjusted a report on risk-based capital of the insurer *or health organization* in accordance with NAC 681B.485 and that the adjusted report on risk-based capital indicates a situation described in subsection 1, except that if the insurer *or health organization* challenges the adjustment pursuant to NAC 681B.580, the event that requires authorized control is the



notification by the Commissioner to the insurer *or health organization* that the Commissioner has, after a hearing, rejected the challenge of the insurer ~~†~~ *or health organization*; or

3. Failure of an insurer *or health organization* to respond to a corrective order in a manner satisfactory to the Commissioner, except that if the insurer *or health organization* challenges the corrective order pursuant to NAC 681B.580 and the Commissioner has, after a hearing, rejected the challenge of the insurer *or health organization* or modified the corrective order, the event that requires authorized control is the failure of the insurer *or health organization* to respond, in a manner satisfactory to the Commissioner, to the corrective order after the rejection of the challenge of the insurer *or health organization* or the modification of the corrective order by the Commissioner.

**Sec. 23.** NAC 681B.535 is hereby amended to read as follows:

681B.535 If an event that requires authorized control occurs, the insurer *or health organization* shall prepare and submit to the Commissioner a plan or revised plan for risk-based capital, as appropriate. The plan or revised plan for risk-based capital must be submitted not later than 45 days after the date on which the event that requires authorized control occurred.

**Sec. 24.** NAC 681B.540 is hereby amended to read as follows:

681B.540 1. If an event that requires authorized control occurs, the Commissioner will:

(a) Take such actions as he or she determines are necessary to cure the event that requires authorized control, including, without limitation, any action authorized by NAC 681B.520 and 681B.525 with respect to an event that requires regulatory action; or

(b) If the Commissioner determines it to be in the best interests of the general public and of the policyholders and creditors of the insurer ~~†~~ *or health organization*, take such actions as he

or she determines are necessary to place the insurer *or health organization* under the regulatory control of the Commissioner pursuant to chapter 696B of NRS.

2. An event that requires authorized control is a sufficient ground for the Commissioner to take action pursuant to chapter 696B of NRS, and the Commissioner has the rights, powers and duties as are set forth in that chapter. If the Commissioner takes action pursuant to this section in response to an adjusted report on risk-based capital, the insurer *or health organization* is entitled to such protections as are afforded to an insurer *or health organization* pursuant to the provisions of chapter 696B of NRS pertaining to summary proceedings.

**Sec. 25.** NAC 681B.545 is hereby amended to read as follows:

681B.545 The following constitute events that require mandatory control:

1. The filing by an insurer *or health organization* of a report on risk-based capital which indicates that the total adjusted capital of the insurer *or health organization* is less than its mandatory control level of risk-based capital; or

2. Notification by the Commissioner to an insurer *or health organization* that the Commissioner has adjusted a report on risk-based capital of the insurer *or health organization* in accordance with NAC 681B.485 and that the adjusted report on risk-based capital indicates a situation described in subsection 1, except that if the insurer *or health organization* challenges the adjustment pursuant to NAC 681B.580, the event that requires mandatory control is the notification by the Commissioner to the insurer *or health organization* that the Commissioner has, after a hearing, rejected the challenge of the insurer ~~†~~ *or health organization*.

**Sec. 26.** NAC 681B.550 is hereby amended to read as follows:

681B.550 1. Except as otherwise provided in this section, if an event that requires mandatory control occurs:

(a) If the insurer is a life and health insurer, the Commissioner will take such actions as he or she determines are necessary to place the insurer under the regulatory control of the Commissioner pursuant to chapter 696B of NRS.

(b) If the insurer is a property and casualty insurer ~~H~~ *or health organization*, the Commissioner:

(1) Will take such actions as he or she determines are necessary to place the insurer *or health organization* under the regulatory control of the Commissioner pursuant to chapter 696B of NRS; or

(2) May, if the property and casualty insurer *or health organization* is allowing its existing business in this state to expire and is not marketing or writing additional business in this state, allow the insurer *or health organization* to continue the termination of its business in this state under the supervision of the Commissioner.

2. An event that requires mandatory control is a sufficient ground for the Commissioner to take action pursuant to chapter 696B of NRS, and the Commissioner has the rights, powers and duties as are set forth in that chapter. If the Commissioner takes action pursuant to this section, the insurer *or health organization* is entitled to such protections as are afforded to an insurer *or health organization* pursuant to the provisions of chapter 696B of NRS pertaining to summary proceedings. The Commissioner may delay taking action pursuant to this section for not more than 90 days after the occurrence of the event that requires mandatory control if the Commissioner reasonably determines that the conditions which created the event will be eliminated during that period.

**Sec. 27.** NAC 681B.555 is hereby amended to read as follows:

681B.555 NAC 681B.560, 681B.565 and 681B.570 apply only to foreign insurers *or health organizations* that are domiciled in a state which has requirements for reporting risk-based capital.

**Sec. 28.** NAC 681B.560 is hereby amended to read as follows:

681B.560 1. Upon the written request of the Commissioner, a foreign insurer *or health organization* shall submit to the Commissioner a report of its level of risk-based capital as of the end of the immediately preceding calendar year. The report on risk-based capital must be in such form and contain such information as is required by the instructions relating to risk-based capital, and must be submitted not later than:

(a) The date on which a domestic insurer *or health organization* must file its report on risk-based capital in this state; or

(b) Fifteen days after the date on which the foreign insurer *or health organization* receives the request from the Commissioner,

↳ whichever is later.

2. Upon the written request of the Commissioner, a foreign insurer *or health organization* shall forthwith submit to the Commissioner a copy of any plan or revised plan for risk-based capital that the foreign insurer *or health organization* has filed with the Insurance Commissioner or chief regulatory officer for insurance of any other state in which the foreign insurer *or health organization* is transacting the business of insurance.

**Sec. 29.** NAC 681B.565 is hereby amended to read as follows:

681B.565 1. The Commissioner may require a foreign insurer *or health organization* to file a plan for risk-based capital with the Commissioner if an event that requires company action, regulatory action or authorized control occurs to the foreign insurer ~~or~~ *or health organization*:

(a) As determined pursuant to the laws of the state in which the foreign insurer *or health organization* is domiciled if:

(1) That state has enacted laws that provide for the filing of a plan for risk-based capital if such an event occurs; and

(2) The Insurance Commissioner or chief regulatory officer for insurance of that state fails to require the insurer *or health organization* to file a plan for risk-based capital in the manner required by those laws; or

(b) As determined pursuant to NAC 681B.400 to 681B.595, inclusive, *and sections 2, 3 and 4 of this regulation*, if the state in which the foreign insurer *or health organization* is domiciled has not enacted any provisions that provide for the determination of such an event or require the filing of a plan for risk-based capital if such an event occurs.

2. Failure by a foreign insurer *or health organization* to file a plan for risk-based capital as required pursuant to this section is a sufficient ground for the Commissioner to order the foreign insurer *or health organization* to cease and desist from writing new business in this state.

**Sec. 30.** NAC 681B.570 is hereby amended to read as follows:

681B.570 If an event that requires mandatory control occurs to a foreign insurer *or health organization* and a domiciliary receiver has not been appointed in accordance with the laws relating to rehabilitation and liquidation of the state in which the foreign insurer *or health organization* is domiciled, if any, the Commissioner may, pursuant to the provisions of chapter 696B of NRS relating to the liquidation of property of a foreign insurer ~~H~~ *or health organization*, apply to a court of competent jurisdiction to appoint the Commissioner as receiver.

**Sec. 31.** NAC 681B.575 is hereby amended to read as follows:

681B.575 A notice by the Commissioner to an insurer *or health organization* made in accordance with NAC 681B.400 to 681B.595, inclusive, *and sections 2, 3 and 4 of this regulation* is effective:

1. Upon dispatch if the notice is sent by registered or certified mail; or
2. Upon receipt by the insurer *or health organization* if the notice is sent in any other manner.

**Sec. 32.** NAC 681B.580 is hereby amended to read as follows:

681B.580 An insurer *or health organization* has the right to a confidential administrative hearing before the Division, on the record, subject to the provisions of NRS 679B.310 to 679B.370, inclusive, at which the insurer *or health organization* may challenge:

1. Any adjustment to the report on risk-based capital made by the Commissioner pursuant to NAC 681B.485;
2. The determination by the Commissioner that the plan or revised plan for risk-based capital of the insurer *or health organization* is unsatisfactory, if the Commissioner has specified pursuant to NAC 681B.500 that the notification of that determination constitutes an event that requires regulatory action;
3. Any determination by the Commissioner that the insurer *or health organization* has failed to adhere to its plan or revised plan for risk-based capital, if the failure has a substantial adverse effect on the ability of the insurer *or health organization* to eliminate an event that requires company action; or
4. Any corrective order issued by the Commissioner pursuant to NAC 681B.400 to 681B.595, inclusive ~~H~~, *and sections 2, 3 and 4 of this regulation.*

**Sec. 33.** NAC 681B.585 is hereby amended to read as follows:

681B.585 1. An insurer *or health organization* may include in its report on risk-based capital and its plan or revised plan for risk-based capital an express statement that the information contained in the report or plan is, and should remain, confidential. If such a statement is included in the report or plan, the Commissioner will classify the information contained in the report or plan as confidential.

2. The result or report of any examination or analysis of an insurer *or health organization* performed, and any corrective order issued by the Commissioner, during the course of an investigation of the insurer *or health organization* pursuant to NAC 681B.400 to 681B.595, inclusive, *and sections 2, 3 and 4 of this regulation* are confidential.

3. The provisions of this section do not apply to any information contained in a report on risk-based capital of an insurer *or health organization* if that information is otherwise included or required to be included in an annual statement of the insurer *or health organization* that is available to the general public.

**Sec. 34.** NAC 681B.590 is hereby amended to read as follows:

681B.590 1. An insurer, *health organization*, agent, broker or other person transacting insurance in this state shall not make, publish, disseminate, circulate or place before the general public, or directly or indirectly cause to be made, published, disseminated, circulated or placed before the general public:

- (a) In a newspaper, magazine or other publication, notice, circular, pamphlet, letter or poster;
- (b) Over any radio or television station, or other electronic medium; or
- (c) In any advertisement, announcement or statement that contains an assertion,

↳ any representation or statement relating to the level of risk-based capital of an insurer ~~or~~ *or health organization*.

2. If any statement that is materially false or otherwise inappropriate with respect to a comparison regarding the total adjusted capital of an insurer ~~or~~ *or health organization*, or if an inappropriate comparison of any other amount to the ~~insurer's~~ level of risk-based capital ~~of~~ *of the insurer or health organization* is published in any written publication and the insurer *or health organization* presents proof satisfactory to the Commissioner of the falsity or inappropriateness of the statement or comparison, the insurer *or health organization* may publish an announcement in a written publication for the sole purpose of rebutting the materially false or inappropriate statement or comparison.

**Sec. 35.** NAC 681B.595 is hereby amended to read as follows:

681B.595 1. The Commissioner will use the instructions relating to risk-based capital and any report, adjusted report, or plan or revised plan for risk-based capital submitted to the Commissioner or in his or her possession pursuant to NAC 681B.400 to 681B.595, inclusive, *and sections 2, 3 and 4 of this regulation* only to monitor the solvency of insurers *or health organizations* transacting insurance in this state and to determine the need for corrective action with respect to the solvency of those insurers ~~or~~ *or health organizations*.

2. Unless otherwise authorized by specific statute, the Commissioner will not:

(a) Use any information contained in the instructions relating to risk-based capital or any report, adjusted report, plan or revised plan in making or determining rates for insurers *or health organizations* transacting insurance in this state;

(b) Consider or introduce such information as evidence in any rate proceeding; or

(c) Use such information to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer *or health organization* or any affiliate of the insurer *or health organization* is authorized to write.



**Sec. 36.** Chapter 695A of NAC is hereby amended by adding thereto a new section to read as follows:

*1. Each society shall maintain a capital account with a net worth in an amount which is not less than the amount of risk-based capital determined in the manner set forth in NRS 681B.290, as amended by section 6 of Assembly Bill No. 435, Statutes of Nevada 2013, at page 3354, and the regulations adopted pursuant thereto.*

*2. As used in this section, "society" has the meaning ascribed to it in NRS 695A.044.*

**Sec. 37.** Chapter 695B of NAC is hereby amended by adding thereto a new section to read as follows:

*Each nonprofit corporation shall maintain a capital account with a net worth in an amount which is not less than the amount of risk-based capital determined in the manner set forth in NRS 681B.290, as amended by section 6 of Assembly Bill No. 435, Statutes of Nevada 2013, at page 3354, and the regulations adopted pursuant thereto.*

**Sec. 38.** This regulation becomes effective on October 1, 2014.

**NRS 233B.066**  
**INFORMATIONAL STATEMENT**

Proposed Regulation Concerning Risk-Based Capital Requirements for Insurers  
LCB File No. R132-13, Cause No. 13.0477

A workshop was held on April 16, 2014, and a hearing was held on April 30, 2014, at the offices of the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), 1818 East College Parkway, 1<sup>st</sup> floor hearing room, Carson City, Nevada 89706, with a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, 2<sup>nd</sup> floor conference room, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning risk-based capital requirements for insurance companies doing business in Nevada.

This regulation is required per the National Association of Insurance Commissioners (“NAIC”) Financial Accreditation Standards and is necessary to address the solvency of the insurers transacting the business of insurance in Nevada. The regulation addresses the requirements and provisions of the Risk-Based Capital Report that all insurers must file to support the minimum capital and surplus required to transact the business of insurance in Nevada. The regulation further addresses the actions that the insurer and the Division must perform if the insurer fails to maintain the minimum capital and surplus amounts. This is an existing regulation that requires amending to bring it into compliance with the revised NAIC model acts and to meet the NAIC’s Financial Accreditation Standards.

The Division’s Legal Section maintains an e-mail list of interested parties, comprised mainly of insurance companies, agencies, and other persons regulated by the Division. The parties on the e-mail list were notified of the workshop and hearing and that a copy of the regulation could be accessed from the Division’s Internet Website at [doi.nv.gov](http://doi.nv.gov).

Public comment was solicited by posting notice of the workshop and hearing in the following public locations: the Web site of the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”), the Division’s Carson City and Las Vegas offices, the Web site of the Nevada legislature, Carson City Courthouse, Office of the Attorney General, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, and Legislative Counsel Bureau, the Donald W. Reynolds Press Center, Nevada State Library & Archives, Carson City Library, Churchill County Library, Clark County District Library, Douglas County Library, Elko County Library, Esmeralda County Library, Eureka Branch Library, Humboldt County Library, Lander County Library, Lincoln County Library, Lyon County Library, Mineral County Library, Pershing County Library, Storey County Clerk’s office, Tonopah Public Library, Washoe County Library, and White Pine County Library.

No interested parties attended the workshop. Oral testimony at the workshop was provided by Annette James, Lead Actuary for the Division.

The Division conducted a confidential small business impact survey and received one response, on Monday, April 14, 2014, from a health organization. The responder indicated that this regulation will have a direct adverse economic impact on its business. Division staff followed up with the respondent and concluded that the provisions of the regulation may have been misinterpreted. Further, given the current facts and circumstances, the respondent agreed with the Division’s conclusion that this regulation would not have a direct adverse economic impact on the respondent’s business.

During the hearing, oral testimony was provided by Annette James, representing the Division. No interested parties attended the hearing.

Regarding the person who gave testimony, the following disclosures are made pursuant to NRS 233B.066(1)(c):

Name	Entity/Organization Represented	Address	Telephone No.	E-Mail Address
Annette James	Nevada Division of Insurance	1818 E. College Pkwy. Ste. 103 Carson City, NV 89706	(775) 687-0732	<a href="mailto:ajames@doi.nv.gov">ajames@doi.nv.gov</a>

Based on the testimony received, the proposed permanent regulation, LCB File No. R132-13, dated November 15, 2013, was amended as follows:

The statutory authority for the regulation was amended to correct the statutory reference to read as follows:

AUTHORITY: §§1-26 and 31-37, NRS 679B.130 and ~~680A.290~~ 681B.290; §§27-30, NRS 679B.130.

Section 8 was amended to read as follows:

“Life and health insurer” includes:

1. A domestic or foreign insurer authorized pursuant to chapter 680A of NRS to offer health insurance or life insurance, or both ~~[-]~~, *and required to file a life, accident and health annual statement, as that term is used in the Annual Statement Instructions ~~Manual~~ for Life and Accident and Health adopted by the National Association of Insurance Commissioners, in accordance with the Division’s filing requirements for the applicable reporting year;* and
2. ~~[A licensed property and casualty insurer that writes only accident and health insurance.]~~ *Any other licensed insurer that is required to file a life, accident and health annual statement, as that term is used in the Annual Statement Instructions ~~Manual~~ for Life and Accident and Health adopted by the National Association of Insurance Commissioners, in accordance with the Division’s filing requirements for the applicable reporting year.*

Section 9 was amended to read as follows:

“Property and casualty insurer” means ~~[a]~~:

1. A domestic or foreign insurer authorized pursuant to chapter 680A of NRS to offer property or casualty insurance ~~[.]~~ *and required to file a property and casualty annual statement, as that term is used in the Annual Statement Instructions ~~Manual~~ for Property and Casualty adopted by the National Association of Insurance Commissioners, in accordance with the Division’s filing requirements for the applicable reporting year.*

2. *A risk retention group licensed as a captive insurer pursuant to chapter 694C of NRS; or*

3. *Any other licensed insurer that is required to file a property and casualty annual statement, as that term is used in the Annual Statement Instructions ~~Manual~~ for Property and Casualty adopted by the National Association of Insurance Commissioners, in accordance with the Division’s filing requirements for the applicable reporting year.*

↪ The term does not include a monoline mortgage guaranty insurer, financial guaranty insurer, title insurer, or a property and casualty insurer that qualifies as a life and health insurer pursuant to NAC 681B.440.

A new section is added to this regulation to create an effective date later than the default (upon filing with the Secretary of State) to allow time for affected insurers to transition to the new regulation. This new section will read as follows:

***This section and sections 1 to 37, inclusive, of this regulation become effective on October 1, 2014.***

The Division confirms that these amendments to the regulation will not have any impact on small businesses.

After considering the record and the recommendation of the hearing officer, the Commissioner has issued an order adopting the regulation, LCB File No. R132-13, as amended, as a permanent regulation of the Division.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: This regulation assists the Division in monitoring the solvency of the insurance companies which it regulates both in the immediate and long term. There are no adverse effects of this regulation on the business it regulates.
- (b) On small businesses: This regulation assists the Division in monitoring the solvency of the insurance companies in the immediate and long term. There are no adverse effects of this regulation on small businesses.

- (c) On the public: This regulation assists the Division in monitoring the solvency of the insurance companies which, in turn, strengthens the companies' solvency and ability to pay claims both in the immediate and long term. There are no adverse effects of this regulation on the public.

The Division does not anticipate any additional cost for enforcing the regulation. The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.