

PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

LCB File No. R049-14

NOTICE OF INTENT TO ACT UPON REGULATIONS

Notice of Hearing for the Adoption, Amendment or Repeal of Regulations of
The Department of Business and Industry, Division of Insurance

The State of Nevada Department of Business and Industry, Division of Insurance (“Division”), (775) 687-0700, will hold a public hearing at **9:00 a.m. on November 12, 2014**, at the Division’s office located at 1818 East College Parkway, 1st floor hearing room, Carson City, Nevada 89706. Proposed regulation R049-14 will be heard at 9:00 a.m. with proposed regulation R074-14 being heard immediately thereafter. Interested persons may also participate through a simultaneous videoconference conducted at the Bradley Building, 2501 East Sahara Avenue, 2nd floor conference room, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to **chapters 687B, 689A, 689C and 695C** of the Nevada Administrative Code (“NAC”).

The following information is provided pursuant to the requirements of Nevada Revised Statute (“NRS”) 233B.0603 and the directives of the Governor:

LCB File No. R049-14. Network Adequacy. (NRS 687B)

A regulation relating to insurance; establishing certain requirements relating to the adequacy of a network plan issued by a carrier; authorizing the Commissioner of Insurance to determine whether a network plan is adequate under certain circumstances; requiring a carrier whose network plan is deemed or determined to be adequate to notify the Commissioner of any significant change to its network and take certain actions to correct any deficiency that results; providing for the availability of a network plan to persons outside of the approved service area in certain circumstances; and providing other matters properly relating thereto.

LCB File No. R074-14. Prescription Drug Formularies. (NRS 689A, 689C and 695C)

A regulation relating to health insurance; prohibiting certain health insurers that provide coverage for prescription drugs and use a drug formulary from making certain changes to the formulary after its approval by the Commissioner of Insurance; and providing other matters properly relating thereto.

Statement of Purpose for LCB File No. R049-14. Network Adequacy.

- (1) Why is the regulation necessary and what is its purpose?

The proposed regulation outlines the requirements for network plans to apply for and be approved by the Commissioner of Insurance (“Commissioner”). Existing federal^{1,2} and state³ law require health benefit plans utilizing a network plan to prove the adequacy of the number, type, and location of the providers and facilities included within the network.

(2) What are the terms or substance of the proposed regulation?

The proposed regulation outlines a procedure for a carrier wishing to apply for a network plan to have the application deemed adequate. It also provides for the ability of the Commissioner to declare a network plan adequate in certain instances when the application fails to meet the safe harbor provisions. The proposed regulation also outlines the requirements for network plans to remain in compliance and the potential remedies and penalties for failing to remain compliant.

(3) What is the anticipated impact of the regulation on the problem(s)?

The proposed regulation is anticipated to mitigate some of the issues consumers, providers, facilities and insurers may experience in ensuring adequate access to medical care. Due to disparities in geography and medical care availability, the regulation is not anticipated to solve all issues consumers experience while trying to access medical care.

(4) Do other regulations address the same problem(s)?

NAC 695C.1255 establishes similar requirements for Health Maintenance Organizations.

(5) Are alternate forms of regulation sufficient to address the problem(s)?

No.

(6) What value does the regulation have to the public?

The proposed regulation should help ensure that members of the public who purchase health benefit plans utilizing network plans have adequate access to medical care or other remedies available.

(7) What is the anticipated economic benefit of the regulation?

a. Public

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

b. Insurance Business

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

c. Small Businesses

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

d. Small Communities

¹ 42 U.S.C. § 18031(c)(1)(B)

² 45 C.F.R. § 155.230

³ NRS 687B.490

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

e. Government Entities

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

(8) What is the anticipated adverse impact, if any?

a. Public

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

b. Insurance Business

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

c. Small Businesses

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

d. Small Communities

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

e. Government Entities

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

(9) What is the anticipated cost of the regulation, both direct and indirect?

a. Enactment:

No cost anticipated.

b. Enforcement:

No direct cost to the state anticipated. Statute permits the Division to pass the cost of enforcement to the insurers applying for the approval of a network plan.

c. Compliance:

No direct cost to the state anticipated. Statute permits the Division to pass the cost of compliance in the form of a market conduct examination to the insurer under examination.

(10) Does the regulation establish a new fee or increase an existing fee?

No.

(11) Provide a statement which identifies the methods used by the agency in determining the impact of the proposed regulation on a small business, prepared pursuant to subsection 3 of NRS 233B.0608.

Attached.

(12) Provide a description of any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, state the name of the regulating federal agency.

None known.

(13) If the regulation is required pursuant to federal law, provide a citation and description of the federal law.

See above.

(14) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions.

Not applicable.

Statement of Purpose for LCB File No. R074-14, Prescription Drug Formularies.

(1) Why is the regulation necessary and what is its purpose?

The proposed regulation clarifies the parameters under which a prescription drug in a formulary may be removed from the formulary or moved among prescription benefit tiers (if applicable).

(2) What are the terms or substance of the proposed regulation?

Existing state law requires insurers and health maintenance organizations (“HMOs”) using prescription drug formularies to notify policyholders or members of, among other things, how often the contents of the formulary are reviewed.⁴ The Patient Protection and Affordable Care Act (“ACA”) generally permits issuers of health benefit plans to deny coverage to an individual attempting to enroll outside of the annual open enrollment period and without a limited open or special enrollment period triggering event.⁵ The Division of Insurance (“Division”) has identified that individuals enrolling in coverage in whole or in part due to the perceived benefits of a particular prescription drug formulary may be disenfranchised if the formulary is materially altered during a plan year, leaving the insured or member with no recourse to change coverage. The proposed regulation clarifies that prescription drug formularies cannot be changed more frequently than annually, except in cases where the United States Food and Drug Administration has issued guidance on the safety of a particular prescription drug or rescinded approval of a drug.

(3) What is the anticipated impact of the regulation on the problem(s)?

The Division anticipates that the proposed regulation will grant consumers peace of mind knowing that formulary benefits will not be changed mid-plan year, except in cases of consumer safety. This should alleviate concerns regarding being “locked in” to coverage that may have less utility than was anticipated when it was purchased.

(4) Do other regulations address the same problem(s)?

No.

(5) Are alternate forms of regulation sufficient to address the problem(s)?

None known.

⁴ NRS 689A.405, 689C.281

⁵ 45 C.F.R. § 147.104

(6) What value does the regulation have to the public?

The Division anticipates that the proposed regulation will grant consumers peace of mind knowing that formulary benefits will not be changed mid-plan year, except in cases of consumer safety. This should alleviate concerns regarding being “locked in” to coverage that may have less utility than was anticipated when it was purchased.

(7) What is the anticipated economic benefit of the regulation?

a. Public

1. Immediate: *Unquantifiable. The Division anticipates reducing the incidence of purchasing health insurance that loses efficacy.*

2. Long Term: *Unquantifiable. The Division anticipates reducing the incidence of purchasing health insurance that loses efficacy.*

b. Insurance Business

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

c. Small Businesses

1. Immediate: *Unquantifiable. The Division anticipates reducing the incidence of purchasing health insurance that loses efficacy.*

2. Long Term: *Unquantifiable. The Division anticipates reducing the incidence of purchasing health insurance that loses efficacy.*

d. Small Communities

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

e. Government Entities

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

(8) What is the anticipated adverse impact, if any?

a. Public

1. Immediate: *None anticipated*

2. Long Term: *None anticipated*

b. Insurance Business

1. Immediate: *Unquantifiable. Insurers and HMOs will need to take measures to ensure their prescription drug formularies do not contribute to adverse selection risk.*

2. Long Term: *Unquantifiable. Insurers and HMOs will need to take measures to ensure their prescription drug formularies do not contribute to adverse selection risk.*

c. Small Businesses

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

d. Small Communities

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

e. Government Entities

1. Immediate: *None anticipated*
2. Long Term: *None anticipated*

(9) What is the anticipated cost of the regulation, both direct and indirect?

- a. Enactment: *None anticipated.*
- b. Enforcement: *None anticipated.*
- c. Compliance: *None anticipated.*

(10) Does the regulation establish a new fee or increase an existing fee?

No.

(11) Provide a statement which identifies the methods used by the agency in determining the impact of the proposed regulation on a small business, prepared pursuant to subsection 3 of NRS 233B.0608.

Attached.

(12) Provide a description of any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, state the name of the regulating federal agency.

None known.

(13) If the regulation is required pursuant to federal law, provide a citation and description of the federal law.

Not applicable.

(14) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions.

Not applicable.

Persons wishing to comment upon the proposed actions of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 1818 East College Parkway, Suite 103, Carson City, Nevada 89706. **Written submissions must be received by the Division on or before November 5, 2014.** If no person who is directly affected by the proposed actions appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulations will be available at the offices of the Division, 1818 East College Parkway, Suite 103, Carson City, Nevada 89706, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://leg.state.nv.us/register/>. Copies of this notice and the proposed regulations will be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. This does not apply to a public body subject to the Open Meeting Law.

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

Notice of the hearing was provided via electronic means to all persons on the agency's e-mail list for administrative regulations, and this Notice of Intent to Act Upon Regulations was posted to the agency's Internet Web site at <http://doi.nv.gov/> and was provided to or posted at the following locations:

Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706

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

Capitol Press Room
Capitol Building Basement
Carson City, NV 89710

Donald W. Reynolds Press Center
102 North Curry Street
Carson City, NV 89701

Legislative Counsel Bureau
401 South Carson Street
Carson City, NV 89701

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Blasdel Building
209 East Musser Street
Carson City, NV 89701

Nevada State Library & Archives
100 North Stewart Street
Carson City, NV 89701

Office of the Governor
Capitol Building
Carson City, NV 89710

Carson City Courthouse
885 East Musser Street
Carson City, NV 89701

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

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library
833 Las Vegas Boulevard North
Las Vegas, NV 89101

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

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Lander County Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
P.O. Box 330
Pioche, NV 89043-0330

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Public Library
P.O. Box 1390
Hawthorne, NV 89415

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

Storey County Clerk
P.O. Drawer D
Virginia City, NV 89440

Tonopah Public Library
P.O. Box 449
Tonopah, NV 89049

Washoe County Library
P.O. Box 2151
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301

Members of the public who would like additional information about the proposed regulations may contact Adam Plain, Insurance Regulation Liaison, at (775) 687-0783, or via e-mail to aplain@doi.nv.gov.

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 1818 East College

NEVADA DIVISION OF INSURANCE
AGENDA

PUBLIC REGULATION HEARINGS

NOVEMBER 12, 2014

9:00 A.M.

In Carson City:

**1818 E. College Pkwy., 1st Floor Hearing Room, Carson City, NV 89706
(Insurance Division Office located in Suite 103)**

Videoconferenced to Las Vegas:

**2501 E. Sahara Ave., 2nd Floor Conference Room, Las Vegas, NV 89104
(Insurance Division Office located in Suite 302)**

PROPOSED REGULATIONS:

- 1. LCB FILE NO. R049-14 concerning Network Adequacy**
 - a. Presentation by Division of Insurance**
 - b. Public Comments to be Received**

- 2. LCB FILE NO. R074-14 concerning Prescription Drug Formularies**
 - a. Presentation by Division of Insurance**
 - b. Public Comments to be Received**

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

Determination of Necessity of Small Business Impact Statement

R049-14

A regulation pertaining to the adequacy of provider networks offered by certain health benefit plans.

Effective for plans issued or renewed on or after January 1, 2015

1. BACKGROUND

Prior to January 1, 2014 the Nevada State Board of Health was required to determine the adequacy of provider networks for health maintenance organizations (HMOs) in the state. HMOs traditionally offer a very limited benefit, or no benefit, when the insured uses a provider outside of the network of approved providers. Preferred provider organizations (PPOs) traditionally allow insureds to seek care from a provider outside of the network of preferred providers in exchange for a lower payment contribution by the insurer. As a result of this difference, PPOs have not previously had a standard for network adequacy.

The Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010, as amended, collectively known as the Affordable Care Act (ACA) mandates that all health insurance sold through an exchange, without regard to its status as an HMO or PPO or otherwise, be certified as a qualified health plan (QHP). Part of the QHP certification process entails a determination of network adequacy and the authority for such (per the ACA) is vested in the state exchange, here the Silver State Health Insurance Exchange (SSHIX), unless otherwise authorized in state law.

Given this potentially bifurcated system (HMO network adequacy by the Board of Health, all other by the SSHIX) and the already fragmented QHP certification process (with the Division of Insurance conducting rate and form review) it was decided that the Board of Health and SSHIX would abdicate their authority over network adequacy to the Division of Insurance (DOI). The DOI determined that conducting network adequacy market-wide, without regard to status as a QHP, would ensure a uniform system of insurance regulation and consumer protection. Assembly Bill 425, which accomplished the goal of transferring authority over provider networks to the DOI, was advanced, passed and signed during the 77th (2013) Legislative Session. This proposed regulation seeks to enact rules building upon the framework contained within that legislation.

- 2. DOES THE PROPOSED REGULATION IMPOSE A DIRECT AND SIGNIFICANT ECONOMIC BURDEN UPON A SMALL BUSINESS OR DIRECTLY RESTRICT THE FORMATION, OPERATION OR EXPANSION OF A SMALL BUSINESS? (NRS 233B.0608.1)(circle one)**

NO

YES

3. HOW WAS THAT CONCLUSION REACHED? (NRS 233B.0608.3)

Upon review of the topic and content of the proposed regulation, Division of Insurance staff determined that there was a high probability that the regulation would affect small business. The Division of Insurance sent a brief survey to businesses identified as being directly regulated by the proposed regulation. At least one survey recipient responded affirmatively to being both a small business (as defined in NRS 233B.0382) and significantly burdened or restricted by the proposed regulation.

I, Scott J. Kipper, Commissioner of Insurance for the State of Nevada, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement above is accurate. (NRS 233B.0608.3)

June 2, 2014
(DATE)

/s/
SCOTT J. KIPPER
Commissioner of Insurance

Small Business Impact Statement

R049-14

4. DESCRIPTION OF SOLICITATION

The DOI identified thirteen businesses as potentially being directly affected by the proposed regulation. A survey was drafted and sent to representatives of the companies via email on Thursday, April 24. The survey requested respondents self-identify as a statutory small business and provide feedback concerning the effects of the proposed regulation on business and the potential methods to alleviate the impact of the proposed regulation. Response was requested by the close of business on Friday, May 2.

5. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES (NRS 233B.0609.1.a)

Comment: One commenter questioned whether the proposed regulation was applicable only to qualified health plans (QHPs). The commenter noted that the Division's issue brief dated Feb. 7, 2014 indicated that the Affordable Care Act (ACA) network reforms only apply to QHPs and guidance issued by the Centers for Medicare & Medicaid Services (CMS) on May 13, 2013 indicated that standards related to essential community providers only apply to QHP networks.

Response: Nevada Revised Statute (NRS) 687B.490 grants authority to the Division of Insurance to determine the adequacy of all network plans in Nevada without regard to their status as a QHP.

Comment: One commenter suggested that the proposed regulation be limited to apply only to QHPs.

Response: NRS 687B.490 applies to all network plans without regard to the status as a QHP. The Division believes that it is in the best interest of consumers to apply network adequacy standards to all network plans available in the state.

Comment: One commenter suggested that the proposed regulation be clarified to indicate that it does not apply to policies classified as “grandfathered” under the ACA.

Response: NRS 687B.490, requiring the Commissioner to determine the adequacy of network plans, is applicable to a network plan before it is “available for sale in this State.” Grandfathered plans, by definition, are not available for sale and thus are not subject to the requirements of this proposed regulation. The Division would note that grandfathered plans may be subject to other network adequacy requirements, e.g. NRS 695C or 695G, if the grandfathered plan was subject to those requirements prior to the efficacy of NRS 687B.490.

Comment: One commenter noted that, as used in sections 8 and 12 of the proposed regulation, the phrase “no greater cost to the covered person than if the service were obtained from network providers or facilities” may be ambiguous. The commenter was unsure if the phrase required out-of-network claims to be paid without regard to a contracted rate or a usual and customary allowance.

Response: The DOI agrees that the language in section 8, subsection 5 is ambiguous and requires amendment. The language in question would appear to permit a carrier using a network plan to bypass the requirement to have an initial adequate network by using referral or other methods to ensure care for covered services. This is not the intent of the DOI and section 8, subsection 5 will be amended to better reflect that intent.

The DOI believes that the language in question is appropriate for section 12, subsection 3, permitting a carrier using a network plan to supplement an inadequate network through referral or other methods while a corrective action plan is being implemented.

Comment: One commenter suggested that sections 8 and 12 of the proposed regulation be amended to indicate that insurance carriers be required to pay the same benefit rate, as opposed to dollar amount, if an adequate network isn’t found to exist.

Response: The Division believes that subsection 5 of section 8 may inappropriately burden insurance carriers that have been determined to have an adequate network pursuant to section 8 and may propose it be removed.

Subsection 3 of section 12 was originally applicable to HMOs. The Division recognizes that its application to PPO and other products may not function as intended and will explore other options to accomplish the goal of ensuring care to consumers when a network becomes inadequate.

Comment: One commenter suggested that sections 8 and 12 of the proposed regulation be amended to require an increased payment only if the claim in question is a non-elective emergent service.

Response: The Division believes that subsection 5 of section 8 may inappropriately burden insurance carriers that have been determined to have an adequate network pursuant to section 8 and may propose it be removed.

Subsection 3 of section 12 is intended to ensure that consumers are held harmless when a network plan becomes inadequate during a policy year. The Division recognizes that concern exists relating to elective or non-emergent care but believes that consumers should not be prevented from seeking care or be forced to pay considerably more for care when an insurance carrier and providers cannot come to an equitable arrangement regarding contracting. However, the Division is willing to explore other methods which may be used to accomplish this goal.

Comment: One commenter suggested that the Commissioner only declare a network to be inadequate in the most egregious situations.

Response: The Division believes that adherence to a defined standard is in the best interests of consumers. The standard should be set so that it provides concrete benefits to consumers without unduly burdening network plans. Setting a standard that is too low obviates the need for a network adequacy standard at all.

Comment: One commenter noted that they employ more than 150 employees and would not meet the appropriate statutory definition of a small employer.

Response: The Division appreciates all feedback from interested parties, even if it falls outside of the scope of this statutory small business impact analysis.

Other interested parties may receive a copy of this summary by contacting the Insurance Regulation Liaison of the Nevada Division of Insurance, Adam Plain, at (775) 687-0783 or aplain@doi.nv.gov.

6. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE (NRS 233B.0609.1.c)

The Division has insufficient data to determine the existence or estimate the magnitude of any estimated economic effects on small businesses the proposed regulation regulates.

7. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES (NRS 233B.0609.1.d)

The Division is exploring options to amend the proposed regulation to reduce the actual and perceived burden on small businesses.

8. ESTIMATED COST OF ENFORCEMENT (NRS 233B.0609.1.e)

The Division anticipates no direct cost to enforce the proposed regulation. NRS 687B.490(6) requires that any expense borne by the Division in determining the adequacy of a network plan be assessed against the insurance carrier applying for the network plan approval.

9. FEE CHANGES (NRS 233B.0609.1.f)

The proposed regulation does not create new fees. NRS 687B.490(6) requires that any expense borne by the Division in determining the adequacy of a network plan be assessed against the insurance carrier applying for the network plan approval. The Division is considering amending the proposed regulation to indicate how costs may be allocated across insurance carriers, if at all, when multiple insurers submit network plans with similar or identical components.

10. DUPLICATIVE PROVISIONS (NRS 233B.0609.1.g)

The proposed regulation is similar in scope to the network adequacy requirements of NRS 695C.080. The division believes that three primary differences exist between the proposed regulation and NRS 695B.080:

1. The proposed regulation is not applicable to grandfathered plans;
2. The proposed regulation is applicable to all network plans and not limited to HMOs; and
3. NRS 695C.080 is applicable to HMOs applying for a certificate of authority whereas the proposed regulation applies to all plans issued by a licensed HMO, specifically plans that may be utilizing a network different than that submitted with the application for the certificate of authority.

11. HOW WAS THE ANALYSIS CONDUCTED? (NRS 233B.0609.1.b)

Division personnel deemed subject matter experts reviewed the responses to the small business impact survey in conjunction with the proposed regulation and guidance from the Centers for Medicare & Medicaid services.

12. REASONS FOR CONCLUSIONS (NRS 233B.0609.1.h)

The analysis of relevant inputs indicated that the proposed regulation was insufficient in many regards. There was concern regarding vague language and general applicability as well as areas omitted due to oversight. The Division has determined that a comprehensive amendment of the proposed regulation is necessary with one goal being the reduction of the impact upon small businesses.

I, Scott J. Kipper, Commissioner of Insurance for the State of Nevada, certify that, to the best of my knowledge or belief, the information contained in the statement above was prepared properly and is accurate. (NRS 233B.0609.2)

June 2, 2014
(DATE)

/s/
SCOTT J. KIPPER
Commissioner of Insurance

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

Determination of Necessity of Small Business Impact Statement

LCB File No. R074-14

A Regulation concerning the formularies of certain health benefit plans.

To Be Effective Upon Filing with the Secretary of State

1. BACKGROUND

The Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010, as amended, collectively known as the Affordable Care Act (ACA) mandates that all health insurance sold on or after January 1, 2014 not meeting the requirements of 42 U.S.C. § 18011 pertaining to “grandfathered” plans offer a package of essential health benefits (“EHB”). There are ten categories of EHB, one of which is coverage for prescription drugs.

Regulations promulgated by the Center for Consumer Information and Insurance Oversight (“CCIIO”) within the federal Department of Health and Human Services detail consumers’ ability to purchase health insurance during open enrollment and special enrollment periods.⁶ The practical effect of these regulations limits consumers’ ability to change health insurance plans outside of the open enrollment except in limited circumstances; consumers are effectively “locked in” to their selection for a calendar year.

Additional guidance from CCIIO limits insurers’ ability to make health insurance plan design changes during the calendar year. However, CCIIO interprets laws relating to the prescription drug EHB to apply only to the quantity of drugs offered in a formulary and not the method of their offering. This interpretation by CCIIO leaves open the possibility that an insurer could remove prescription drugs from a formulary, or move prescription drugs among different cost-sharing tiers, while still maintaining compliance with the numerical minimums enforced by CCIIO.

The Division of Insurance has identified this as a potential loophole wherein consumers needing certain specific prescription drugs may purchase a health insurance plan with a favorable formulary design only to have the prescription drug moved or removed during the plan year. Such a scenario would leave the consumer with little or no recourse to pursue other health insurance options until the following open enrollment period. The proposed regulation seeks to address this issue by requiring prescription drug formularies to remain constant for the entire benefit year once approved except in certain scenarios where the public well-being may be at risk.

2. DOES THE PROPOSED REGULATION IMPOSE A DIRECT AND SIGNIFICANT ECONOMIC BURDEN UPON A SMALL BUSINESS OR DIRECTLY RESTRICT THE

⁶ 45 C.F.R. § 147.104, 45 C.F.R. § 155.410 and 45 C.F.R. § 155.420

FORMATION, OPERATION OR EXPANSION OF A SMALL BUSINESS? (NRS 233B.0608.1)(circle one)

NO YES

3. HOW WAS THAT CONCLUSION REACHED? (NRS 233B.0608.3)

The Division of Insurance does not believe that the proposed regulation imposes a significant economic burden upon small businesses. There should be no additional cost of compliance as the regulation does not require health insurers to take any proactive or reactive steps. The Division acknowledges the possibility that a formulary design or pricing decision made by a health insurer could lead to that insurer's plan being selected against but it is not anticipated that any associated economic impact would be significant.

I, Scott J. Kipper, Commissioner of Insurance for the State of Nevada, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement above is accurate. (NRS 233B.0608.3)

July 3, 2014
(DATE)

/s/
SCOTT J. KIPPER
Commissioner of Insurance

Small Business Impact Statement

LCB File No. R074-14

4. DESCRIPTION OF SOLICITATION

Not Applicable

5. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES (NRS 233B.0609.1.a)

Not Applicable

Other interested parties may receive a copy of this summary by contacting the Insurance Regulation Liaison of the Nevada Division of Insurance, Adam Plain, at (775) 687-0783 or aplain@doi.nv.gov.

6. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE (NRS 233B.0609.1.c)

Not Applicable

7. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES (NRS 233B.0609.1.d)

Not Applicable

8. ESTIMATED COST OF ENFORCEMENT (NRS 233B.0609.1.e)

Not Applicable

9. FEE CHANGES (NRS 233B.0609.1.f)

Not Applicable

10. DUPLICATIVE PROVISIONS (NRS 233B.0609.1.g)

Not Applicable

11. HOW WAS THE ANALYSIS CONDUCTED? (NRS 233B.0609.1.b)

Not Applicable

12. reasons FOR CONCLUSIONS (NRS 233B.0609.1.h)

Not Applicable

I, Scott J. Kipper, Commissioner of Insurance for the State of Nevada, certify that, to the best of my knowledge or belief, the information contained in the statement above was prepared properly and is accurate. (NRS 233B.0609.2)

July 3, 2014
(DATE)

/s/
SCOTT J. KIPPER
Commissioner of Insurance