

PROPOSED REGULATION OF THE COMMISSIONER OF INSURANCE

LCB File No. R074-14

NOTICE OF INTENT TO ACT UPON REGULATION

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 October 20, 2015**, at the Division’s office located at 1818 East College Parkway, 1st floor hearing room, Carson City, Nevada 89706. 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 689A 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. R074-14. Prescription Drug Formularies.

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. 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.¹ 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.² The Division of Insurance (“Division”) has identified that individuals enrolling in coverage in whole or in part due to the perceived benefits of a

¹ NRS 689A.405, 689C.281

² 45 C.F.R. § 147.104

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.*

(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 action 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 October 13, 2015.** If no person who is directly affected by the proposed action 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 regulation 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 regulation 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 regulation 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 regulation 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 regulation noticing, and this Notice of Intent to Act Upon Regulation 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, Nevada 89706

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

Legislative Building
401 South Carson Street
Carson City, Nevada 89701

Grant Sawyer Building
555 East Washington Avenue
Las Vegas, Nevada 89101

Blasdel Building
209 East Musser Street
Carson City, Nevada 89701

Capitol Building Main Floor
101 North Carson Street
Carson City, Nevada 89701

Nevada Department of Employment,
Training and Rehabilitation
2800 E. Saint Louis Ave.
Las Vegas, NV 89104

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

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

Churchill County Library
553 South Main Street
Fallon, Nevada 89406

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

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

Elko County Library
720 Court Street
Elko, Nevada 89801

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

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

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

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

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

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

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

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

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

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

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

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Members of the public who would like additional information about the proposed regulations may contact Glenn Shippey, Actuarial Analyst, at (775) 687-0738, or via e-mail to gshippey@doi.nv.gov.

