

**PROPOSED REGULATION OF  
THE COMMISSIONER OF INSURANCE**

**LCB File No. R001-18**

February 16, 2018

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

AUTHORITY: §§1-3 and 5, NRS 679B.130, 686A.015 and 686A.230; §§4 and 6, NRS 679B.130 and 686A.015.

A REGULATION relating to insurance; requiring certain information to be included in certain agreements for consultation or related advice; requiring a copy of certain agreements for consultation or related advice to be made available for audit; authorizing certain persons to charge and collect a fee for providing consultation or related advice concerning individual health benefit plans; requiring an agreement for consultation or related advice concerning individual health benefit plans to contain certain information; revising references to insurance agents and brokers; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes the Commissioner of Insurance to adopt reasonable regulations for the administration of any provision of the Nevada Insurance Code. (NRS 679B.130) Existing law further sets forth that the Commissioner has exclusive jurisdiction in regulating trade practices in the business of insurance in this State. (NRS 686A.015)

Existing law authorizes the Commissioner to adopt regulations to allow the charging and collecting of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of individual or group life or health insurance or an individual or group annuity, whether or not such consultation or related advice results in the purchase of a policy of insurance or annuity. (NRS 686A.230, as amended by section 11 of Senate Bill No. 209, chapter 560, Statutes of Nevada 2017, at page 4004) Existing regulations require an agreement for consultation or related advice which is entered into by a financial planner, life or health insurance agent or broker, or insurance consultant to: (1) be in writing; and (2) contain certain information. (NAC 686A.330) **Section 5** of this regulation requires an agreement for consultation or related advice to also contain the name and address of the client or prospective client. Existing regulations additionally require each client or prospective client of a financial planner, life or health insurance agent or broker, or insurance consultant to be provided with a copy of the agreement. (NAC 686A.330) **Section 5** further requires a financial planner, producer of insurance or insurance consultant to retain a copy of the agreement and make such a copy available for audit by the Division of Insurance of the Department of Business and Industry.

Existing regulations authorize a financial planner, life or health insurance agent or broker, or insurance consultant to charge a fee for providing consultation or related advice concerning: (1) group life or group annuity products; and (2) group health products. (NAC 686A.330) **Section 5** authorizes a financial planner, producer of insurance or insurance consultant to charge a fee for providing consultation or related advice concerning certain individual health benefit plans. **Section 2** of this regulation requires an agreement for consultation or related advice concerning individual health benefit plans to contain certain information in addition to the information required by **section 5**. **Section 3** of this regulation provides a sample form for such an agreement. **Section 4** of this regulation makes conforming changes by defining the term “health benefit plan” and amending the definition for “health insurance” to include individual or group health insurance.

Existing law replaces various references to insurance agents and brokers with the term “producer of insurance.” (Sections 15, 21, 26, 27, 29-32, 164 and 165 of Assembly Bill No. 83, chapter 376, Statutes of Nevada 2017, at page 2323) **Sections 4 and 5** make conforming changes by replacing “agent or broker” with “producer of insurance.”

**Section 6** of this regulation makes conforming changes.

**Section 1.** Chapter 686A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2. 1. *If a financial planner, producer of insurance or insurance consultant charges a fee pursuant to paragraph (c) of subsection 3 of NAC 686A.330, the agreement for consultation or related advice must contain, in addition to the information required pursuant to subsection 1 of NAC 686A.330:***

***(a) The number of any license issued by this State or by a national entity to the financial planner, producer of insurance or insurance consultant.***

***(b) The date by which the consultation or related advice is to be completed.***

***(c) A statement of whether the fee charged pursuant to paragraph (c) of subsection 3 of NAC 686A.330 is being negotiated to a new amount. If the fee is being negotiated to a new amount, a description of the services to be provided under the new fee amount.***

***(d) A statement of whether the fee charged pursuant to paragraph (c) of subsection 3 of NAC 686A.330 is refundable pro rata. If the fee is not refundable pro rata, a statement***

*explaining that the fee is fully earned at the completion of the consultation or related advice and is not refundable.*

*(e) The name of any health insurance carrier appointment.*

*(f) A statement of whether the financial planner, producer of insurance or insurance consultant is certified as an exchange enrollment facilitator pursuant to chapter 695J of NRS.*

*(g) A statement of whether the financial planner, producer of insurance or insurance consultant currently maintains insurance covering liability for errors and omissions.*

*(h) A disclosure notice which contains the following language:*

*The Affordable Care Act currently provides premium subsidies to those meeting the eligibility criteria. Premium subsidies are only available through policies offered on the Silver State Health Insurance Exchange.*

*(i) The telephone numbers of the Silver State Health Insurance Exchange, (855) 768-5465, and the Nevada Division of Insurance, (888) 872-3234.*

*(j) The following statement that must be signed and dated by the client or prospective client:*

***CLIENT OR PROSPECTIVE CLIENT ATTESTATION***

*By signing below, I attest that I have reviewed the information provided in this disclosure and have received a copy of this form.*

*(k) The following statement that must be signed and dated by the financial planner, producer of insurance or insurance consultant:*

***FINANCIAL PLANNER, PRODUCER OF INSURANCE OR INSURANCE  
CONSULTANT ATTESTATION***

*By signing below, I attest that I have disclosed all relevant facts concerning the services to be provided and the fees, charges or other remuneration that will be charged or received for providing the consultation or related advice described.*

2. *As used in this section, "health insurance carrier appointment" means any license or contract a financial planner, producer of insurance or insurance consultant has with any person or entity licensed pursuant to title 57 of NRS to sell individual health benefit plans.*

Sec. 3. *The following is a sample form for an agreement for consultation or related advice concerning individual health benefit plans:*

**NEVADA AGREEMENT FOR CONSULTATION OR RELATED ADVICE:  
INDIVIDUAL HEALTH BENEFIT PLAN**

Date: \_\_\_\_\_

Client or Prospective Client:

*Name  
Street Address  
City, State Zip*

Financial Planner, Producer of Insurance or Insurance Consultant:

*Name of the Financial Planner, Producer of Insurance or Insurance Consultant  
Street Address  
City, State Zip  
Telephone Number  
Email Address  
License Number(s) of any license issued by Nevada to the Financial Planner,  
Producer of Insurance or Insurance Consultant  
License Number(s) of any license issued by a national entity to the Financial  
Planner, Producer of Insurance or Insurance Consultant*

Insurance Carrier which the Financial Planner, Producer of Insurance or Insurance Consultant represents (if applicable):

*Name  
Street Address  
City, State Zip*

Services to be provided in connection with the fees listed below: \_\_\_\_\_

Date by which work is to be completed: \_\_\_\_\_

Fee Schedule:      Services to be provided under the agreement

|       |              |          |
|-------|--------------|----------|
| _____ | <u>Fee</u>   | \$ _____ |
| _____ |              | \$ _____ |
|       | <b>TOTAL</b> | \$ _____ |

Fee(s) Negotiated: Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe terms: \_\_\_\_\_

Fee is refundable pro rata: Yes \_\_\_\_\_ No \_\_\_\_\_ If no, that means that the fee is fully earned and is not refundable.

Health Insurance Carrier Appointment(s): \_\_\_\_\_

The financial planner, producer of insurance or insurance consultant is certified as an exchange enrollment facilitator: Yes \_\_\_\_\_ No \_\_\_\_\_

The financial planner, producer of insurance or insurance consultant will receive any commission or other compensation for services in addition to the fee paid by the client: Yes \_\_\_\_\_ No \_\_\_\_\_

The financial planner, producer of insurance or insurance consultant currently has insurance covering liability for errors and omissions: Yes \_\_\_\_\_ No \_\_\_\_\_

Note: This agreement may be rescinded by the client, without penalty, within 10 days after it is entered into.

The Affordable Care Act currently provides premium subsidies to those meeting the eligibility criteria. Premium subsidies are only available through policies offered on the Silver State Health Insurance Exchange.

Contact Information: Silver State Health Insurance Exchange: (855) 768-5465  
Nevada Division of Insurance: (888) 872-3234

**CLIENT OR PROSPECTIVE CLIENT ATTESTATION:**

By signing below, I attest that I have reviewed the information provided in this disclosure and have received a copy of this form.

Signature of the Client or Prospective Client \_\_\_\_\_ Date \_\_\_\_\_

**FINANCIAL PLANNER, PRODUCER OF INSURANCE OR INSURANCE CONSULTANT ATTESTATION:**

By signing below, I attest that I have disclosed all relevant facts concerning services to be provided and the fees, charges or other remuneration that will be charged or received for providing the services described.

Signature of the Financial Planner, Producer of Insurance or Insurance Consultant \_\_\_\_\_ Date \_\_\_\_\_

**Sec. 4.** NAC 686A.320 is hereby amended to read as follows:

686A.320 As used in NAC 686A.320 to 686A.340, inclusive, ***and sections 2 and 3 of this regulation***, unless the context otherwise requires:

1. “Agent” has the meaning ascribed to it in NRS 683A.321.
2. “Financial planner” means ~~an agent or broker~~ ***a producer of insurance*** who has successfully completed a course of instruction required for designation as a financial planner by a recognized professional association of financial planners.
3. ***“Health benefit plan” has the meaning ascribed to it in NRS 689A.540.***
4. “Health insurance” includes any:
  - (a) ***Individual or group health insurance provided pursuant to chapter 689A or 689B of NRS;***
  - (b) Contract for hospital, medical or dental services entered into pursuant to chapter 695B of NRS;
  - ~~(b)~~ (c) Health care plan provided pursuant to chapter 695C of NRS;
  - ~~(e)~~ (d) Plan for dental care provided pursuant to chapter 695D of NRS; or
  - ~~(d)~~ (e) Plan for prepaid limited health service provided pursuant to chapter 695F of NRS.

Sec. 5. NAC 686A.330 is hereby amended to read as follows:

686A.330 1. Any agreement for consultation or related advice *on the purchase of individual or group life or health insurance or an individual or group annuity, whether or not such consultation or related advice results in the purchase of a policy of insurance or annuity,* which is entered into by a financial planner, ~~life or health insurance agent or broker,~~ *producer of insurance* or insurance consultant must be in writing and must contain:

(a) *The name and address of the client or prospective client seeking the consultation or related advice;*

(b) The name, ~~and~~ address, *telephone number and electronic mail address* of the financial planner, ~~life or health insurance agent or broker,~~ *producer of insurance* or insurance consultant;

~~(b) The~~ (c) *If applicable, the* name and address of any person or entity licensed pursuant to title 57 of NRS which ~~he~~ *the financial planner, producer of insurance* or ~~she~~ *insurance consultant* represents;

~~(e)~~ (d) A description of any license ~~he~~ *the financial planner, producer of insurance* or ~~she~~ *insurance consultant* holds;

~~(d)~~ (e) A description of ~~the~~ *any* fee to be charged and the services to be provided under the agreement;

~~(e)~~ (f) A provision allowing the client, without penalty, to rescind the agreement within 10 days after it is entered into; and

~~(f)~~ (g) A statement of whether the financial planner ~~for life or health insurance agent or broker,~~ *producer of insurance or insurance consultant* is to receive any commission or other compensation for services in addition to ~~the~~ *any* fee paid by the client.

2. ~~Each~~ *A financial planner, producer of insurance or insurance consultant must:*

(a) *Provide each* client or prospective client of ~~a~~ *the* financial planner, ~~life or health insurance agent or broker,~~ *producer of insurance* or insurance consultant ~~must be provided~~ with a copy of the agreement ~~+~~ *entered into in accordance with this section or section 3 of this regulation; and*

(b) *Retain a copy of the agreement entered into in accordance with this section or section 3 of this regulation and make such a copy available for audit by the Division.*

3. A financial planner, life or health insurance agent or broker, or insurance consultant shall not charge a fee pursuant to this section except with respect to:

(a) Group life or group annuity products provided pursuant to chapter 688A or 688B of NRS; ~~and~~

(b) Group health products provided pursuant to chapter 689B of NRS ~~+~~; *and*

(c) *Individual health benefit plans provided pursuant to chapter 689A or 695C of NRS.*

**Sec. 6.** NAC 686A.340 is hereby amended to read as follows:

686A.340 Any commission received by a financial planner, agent or broker *or producer of insurance pursuant to NAC 686A.320 to 686A.340, inclusive, and sections 2 and 3 of this regulation* for services related to the sale of insurance shall be deemed a premium for purposes of the tax imposed by chapter 680B of NRS.