

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R127-18

January 10, 2019

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

AUTHORITY: §1, NRS 679B.130; §2, NRS 679B.130 and 695B.280; §3, NRS 679B.130, 689C.155 and 689C.940.

A REGULATION relating to stop-loss insurance; requiring certain policies for stop-loss insurance relating to group health plans to satisfy certain standards and include certain provisions and information; 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 the Nevada Insurance Code. (NRS 679B.130)

Existing regulations prohibit an insurer from issuing a policy for stop-loss insurance for a group health plan if the policy for stop-loss insurance: (1) fails to meet certain standards for attachment points for individuals and groups; or (2) provides direct coverage of health care expenses of an individual. Existing regulations further provide that if a policy for stop-loss insurance for a group health plan fails to meet such standards or provides such direct coverage, the policy will be deemed to be a health benefit plan. (NAC 689B.350) **Section 1** of this regulation requires a policy for stop-loss insurance to: (1) not be issued for a small employer group that offers a group health plan to fewer than 15 employees; (2) not provide direct coverage of the health care expenses of an individual; and (3) have certain standard attachment points for individuals and groups. **Section 1** requires a policy for stop-loss insurance for a group health plan that is delivered to, issued for delivery to or entered into with a small employer to: (1) include certain provisions and information; and (2) not include any provision which allows lasing or allows claims to be paid directly to certain individuals. **Section 1** requires an insurer that issues a policy for stop-loss insurance to: (1) submit to the Commissioner a summary document that includes certain information; and (2) annually provide certain information to the Commissioner. **Section 1** also provides that certain policies of stop-loss insurance are not required to include guaranteed issue and guaranteed renewability provisions.

Existing law authorizes the Commissioner to adopt such reasonable regulations relating to the substance, form and issuance of any contract covering the furnishing of hospital or medical or dental services. (NRS 695B.280) Existing regulations prohibit a nonprofit insurer from issuing

a policy of stop-loss insurance for a hospital, medical or dental service plan if the policy for stop-loss insurance: (1) fails to meet certain standards for attachment points for individuals and groups; or (2) provides direct coverage of health care expenses of an individual. Existing regulations further provide that if a policy of stop-loss insurance for a hospital, medical or dental service plan fails to meet such standards or provides such direct coverage, the policy will be deemed to be a health benefit plan. (NAC 695B.250) **Section 2** of this regulation requires a policy for stop-loss insurance to: (1) not be issued for a small employer group that offers a group health plan to fewer than 15 employees; (2) not provide direct coverage of the health care expenses of an individual; and (3) have certain standard attachment points for individuals and groups. **Section 2** requires a policy for stop-loss insurance for a group health plan that is delivered to, issued for delivery to or entered into with a small employer to: (1) include certain provisions and information; and (2) not include any provision which allows lasering or allows claims to be paid directly to certain individuals. **Section 2** requires a nonprofit insurer that issues a policy for stop-loss insurance to: (1) submit to the Commissioner a summary document that includes certain information; and (2) annually provide certain information to the Commissioner. **Section 2** also provides that certain policies of stop-loss insurance are not required to include guaranteed issue and guaranteed renewability provisions.

Existing law relating to health insurance for small employers authorizes the Commissioner to adopt regulations to: (1) carry out the provisions relating to health benefit plans; and (2) prescribe standards for determining whether a policy issued as a stop-loss policy is a health benefit plan. (NRS 689C.155, 689C.940) Existing regulations prohibit an insurer from issuing a policy of stop-loss insurance that fails to meet certain standards for attachment points for individuals and groups. Existing regulations further provide that if a policy of stop-loss insurance fails to meet such standards, the policy will be deemed to be a health benefit plan. (NAC 689C.250) **Section 3** of this regulation repeals the existing regulation which specifically applies to policies relating to small employers, as such standards have been modified and incorporated into **section 2**.

Section 1. NAC 689B.350 is hereby amended to read as follows:

689B.350 1. ~~{An insurer shall not issue a}~~ A policy for stop-loss insurance ~~{for a group health plan subject to the provisions of this chapter and chapter 689B of NRS if the policy for stop-loss insurance:}~~ *must:*

(a) ~~{Has}~~ *Not be issued for a small employer group that offers a group health plan to fewer than 15 employees who are covered by the group health plan;*

(b) *Not provide direct coverage of the health care expenses of an individual;*

(c) *Have* an annual *specific* attachment point for claims incurred per individual that is ~~lower than \$10,000;~~

~~(b) Has~~ *not less than \$20,000; and*

~~(d) Have~~ an annual aggregate attachment point for : ~~{groups of not more than 50 persons that is lower than the greater of:}~~

(1) ~~{The number of group members times \$4,000;~~

~~—(2)}~~ *Small employer groups that is at least the greater of:*

(I) One hundred and twenty percent of expected claims; or

~~{(3) Ten}~~

(II) Twenty thousand dollars;

~~{(e) Has an annual aggregate attachment point for} or~~

~~(2) All other~~ groups ~~{of more than 50 persons}~~ that is ~~{lower than}~~ *at least* 110 percent of expected claims . ~~{; or}~~

~~—(d) Provides direct coverage of health care expenses of an individual.}~~

2. For the purposes of this section, an insurer shall determine the number of *natural* persons , *including, without limitation, employees and nonemployees of the small employer,* in a group *health plan* on a consistent basis at least annually.

3. ~~{If a}~~ *A* policy for stop-loss insurance for a group health plan ~~{does not meet the criteria set forth in this section, the policy will be deemed to be a health benefit plan for the purposes of this chapter and chapter 689B of NRS.}~~ *that is delivered to, issued for delivery to or entered into with a small employer must include, without limitation, the following provisions:*

(a) A provision in the policy for stop-loss insurance that guarantees the rates of the policy for stop-loss insurance for at least 12 months, without adjustment, unless there is a change in the benefits provided under the group health plan provided by the small employer that occurs during the term of the policy for stop-loss insurance;

(b) Both a specific attachment point and an aggregate attachment point;

(c) Limitations on benefits and exclusions to coverage that align with the limitations on benefits and exclusions to coverage of the group health plan which is provided by the small employer, including, without limitation, any annual or lifetime limits provided in the group health plan provided by the small employer; and

(d) A requirement that the policy for stop-loss insurance must pay any claim incurred by a natural person, including, without limitation, an employee or nonemployee of the small employer, covered by the policy of stop-loss insurance if the claim which is payable under a group health plan is incurred during the term of the policy for stop-loss insurance and such a claim is:

(1) Paid within 6 months after the date the policy of stop-loss insurance contractually ends; or

(2) Unpaid as of the termination date, if any, of the policy of stop-loss insurance.

4. A policy for stop-loss insurance for a group health plan that is delivered to, issued for delivery to or entered into with a small employer must not include any provision which allows:

(a) Lasering; or

(b) Claims to be paid directly to an individual employee, member or participant.

5. An insurer that issues a policy for stop-loss insurance shall submit to the Commissioner a summary document which includes, without limitation, the following information:

(a) The total premium or other consideration for the policy of stop-loss insurance;

(b) The effective date of the policy for stop-loss insurance, the date the policy of stop-loss insurance contractually ends and any renewability provisions;

(c) Both the specific attachment point and the aggregate attachment point;

(d) Any limitations on coverage that are included in the policy for stop-loss insurance;

(e) An explanation of the monthly accommodation and the disclosure of any features of the monthly accommodation that are included in the policy of stop-loss insurance;

(f) A description of terminal liability funding, including, without limitation, the cost of processing claims before and after the termination date, if any, of the policy of stop-loss insurance; and

(g) The maximum liability of the small employer for claims arising under the policy for stop-loss insurance.

6. An insurer that issues a policy for stop-loss insurance shall annually submit to the Commissioner:

(a) If applicable, the experience the small employer had in Nevada with the policy for stop-loss insurance for the previous calendar year, including, without limitation:

(1) The size of the small employer, including, without limitation, the number of:

(I) Natural persons, including, without limitation, employees and nonemployees of the small employer, covered by the policy for stop-loss insurance; and

(II) Employees employed by the small employer as of the beginning of the policy for stop-loss insurance;

(2) The number of exposure years for:

(I) All natural persons, including, without limitation, employees and nonemployees of the small employer, covered by the policy for stop-loss insurance; and

(II) Employees employed by the small employer and covered by the policy for stop-loss insurance for the previous calendar year;

(3) The specific attachment point;

(4) Expected claims in the absence of a policy for stop-loss insurance;

(5) Expected claims under the specific attachment point;

(6) The aggregate attachment point;

(7) The earned premium; and

(8) Any claims paid by the policy of stop-loss insurance, including, without limitation:

(I) Specific losses resulting from claims incurred by a natural person, including, without limitation, an employee or nonemployee of the small employer, who is a member of the insured group; and

(II) Aggregate losses incurred by the insured group; and

(b) A certificate of compliance with the requirements of this section.

7. The information required under subsections 5 and 6 must be provided in a format prescribed by the Commissioner or in a substantially similar format approved by the Commissioner.

8. Guaranteed issue and guaranteed renewability do not apply to a policy of stop-loss insurance governed by this section.

9. As used in this section:

(a) "Actively-at-work exclusion" means the exclusion of a natural person, including, without limitation, an employee or nonemployee of the small employer, who is a member of the group health plan offered by a small employer from coverage because the natural person is:

(1) An employee of the small employer; and

(2) Is not actively at work as a result of the use of earned leave.

(b) “Attachment point” means the amount of claims incurred by an insured group beyond which an insurer incurs a liability for payment.

~~[(b)]~~ *(c)* “Expected claims” means the amount of claims that, in the absence of a *policy for stop-loss ~~policy~~ insurance* or other insurance, are projected to be incurred by an insured group through its *group* health plan.

~~[(c)]~~ “~~Stop-loss~~”

(d) “Group health plan” has the meaning ascribed to it in NRS 689B.390.

(e) “Health care expenses” means the expenses of a group health plan associated with the delivery of services for health care that are analogous to the incurred losses of an insurer.

(f) “Lasing” means:

(1) Assigning a different attachment point for a natural person, including, without limitation, an employee or nonemployee of a small employer, based on his or her expected claims or diagnosis;

(2) Assigning a deductible to a natural person, including, without limitation, an employee or nonemployee of a small employer, that must be met before coverage under a policy of stop-loss insurance applies;

(3) Denying coverage under a policy of stop-loss insurance to a natural person, including, without limitation, an employee or nonemployee of a small employer, who is otherwise covered by the group health plan provided by the small employer; or

(4) Applying an actively-at-work exclusion to a policy of stop-loss insurance.

(g) *“Policy for stop-loss insurance” means insurance purchased by ~~an~~ a small employer to limit exposure to claim expenses under a group health ~~benefit~~ plan provided by the small employer.*

(h) *“Small employer” has the meaning ascribed to it in NRS 689C.095.*

(i) *“Specific attachment point” means the amount of claims incurred per natural person, including, without limitation, an employee or nonemployee of a small employer, who is a member of the insured group beyond which an insurer incurs a liability for payment.*

(j) *“Termination date” means a date upon which a policy for stop-loss insurance is terminated before the end date contractually provided in the policy for stop-loss insurance.*

Sec. 2. NAC 695B.250 is hereby amended to read as follows:

695B.250 1. ~~{An insurer shall not issue a}~~ A policy for stop-loss insurance ~~{for a hospital, medical or dental service plan subject to the provisions of this chapter and chapter 695B of NRS if the policy for stop-loss insurance:}~~ *must:*

(a) ~~{Has}~~ *Not be issued for a small employer group that offers a group health plan to fewer than 15 employees who are covered by the group health plan;*

(b) *Not provide direct coverage of the health care expenses of an individual;*

(c) *Have an annual specific attachment point for claims incurred per individual that is ~~lower~~ than \$10,000;*

~~(b) Has~~ *not less than \$20,000; and*

(d) *Have an annual aggregate attachment point for : ~~{groups of not more than 50 persons that is lower than the greater of:}~~*

(1) ~~{The number of group members times \$4,000;~~

~~(2)}~~ *Small employer groups that is at least the greater of:*

(I) One hundred and twenty percent of expected claims; or

~~{(3) Ten}~~

(II) *Twenty* thousand dollars;

~~{(e) Has an annual aggregate attachment point for} or~~

(2) *All other* groups ~~{of more than 50 persons}~~ that is ~~{lower than}~~ *at least* 110 percent of expected claims. ~~{; or~~

~~—(d) Provides direct coverage of health care expenses of an individual.}~~

2. For the purposes of this section, an insurer shall determine the number of *natural* persons, *including, without limitation, employees and nonemployees of the small employer*, in a group *health plan* on a consistent basis at least annually.

3. ~~{If a}~~ A policy for stop-loss insurance for a ~~{hospital, medical or dental service plan does not meet the criteria set forth in this section, the policy will be deemed to be a health benefit plan for the purposes of this chapter and chapter 695B of NRS.}~~ *group health plan that is delivered to, issued for delivery to or entered into with a small employer must include, without limitation, the following provisions:*

(a) A provision in the policy for stop-loss insurance that guarantees the rates of the policy for stop-loss insurance for at least 12 months, without adjustment, unless there is a change in the benefits provided under the group health plan provided by the small employer that occurs during the term of the policy for stop-loss insurance;

(b) Both a specific attachment point and an aggregate attachment point;

(c) Limitations on benefits and exclusions to coverage that align with the limitations on benefits and exclusions to coverage of the group health plan which is provided by the small

employer, including, without limitation, any annual or lifetime limits provided in the group health plan provided by the small employer; and

(d) A requirement that the policy for stop-loss insurance must pay any claim incurred by a natural person, including, without limitation, an employee or nonemployee of the small employer, covered by the policy of stop-loss insurance if the claim which is payable under a group health plan is incurred during the term of the policy for stop-loss insurance and such a claim is:

(1) Paid within 6 months after the date the policy of stop-loss insurance contractually ends; or

(2) Unpaid as of the termination date, if any, of the policy of stop-loss insurance.

4. A policy for stop-loss insurance for a group health plan that is delivered to, issued for delivery to or entered into with a small employer must not include any provision which allows:

(a) Lasering; or

(b) Claims to be paid directly to an individual employee, member or participant.

5. An insurer that issues a policy for stop-loss insurance shall submit to the Commissioner a summary document which includes, without limitation, the following information:

(a) The total premium or other consideration for the policy of stop-loss insurance;

(b) The effective date of the policy for stop-loss insurance, the date the policy of stop-loss insurance contractually ends and any renewability provisions;

(c) Both the specific attachment point and the aggregate attachment point;

(d) Any limitations on coverage that are included in the policy for stop-loss insurance;

(e) An explanation of the monthly accommodation and the disclosure of any features of the monthly accommodation that are included in the policy of stop-loss insurance;

(f) A description of terminal liability funding, including, without limitation, the cost of processing claims before and after the termination date, if any, of the policy of stop-loss insurance; and

(g) The maximum liability of the small employer for claims arising under the policy for stop-loss insurance.

6. An insurer that issues a policy for stop-loss insurance shall annually submit to the Commissioner:

(a) If applicable, the experience the small employer had in Nevada with the policy for stop-loss insurance for the previous calendar year, including, without limitation:

(1) The size of the small employer, including, without limitation, the number of:

(I) Natural persons, including, without limitation, employees and nonemployees of the small employer, covered by the policy for stop-loss insurance; and

(II) Employees employed by the small employer as of the beginning of the policy for stop-loss insurance;

(2) The number of exposure years for:

(I) All natural persons, including, without limitation, employees and nonemployees of the small employer, covered by the policy for stop-loss insurance; and

(II) Employees employed by the small employer and covered by the policy for stop-loss insurance for the previous calendar year;

(3) The specific attachment point;

(4) Expected claims in the absence of a policy for stop-loss insurance;

(5) Expected claims under the specific attachment point;

(6) The aggregate attachment point;

(7) The earned premium; and

(8) Any claims paid by the policy of stop-loss insurance, including, without limitation:

(I) Specific losses resulting from claims incurred by a natural person, including, without limitation, an employee or nonemployee of the small employer, who is a member of the insured group; and

(II) Aggregate losses incurred by the insured group; and

(b) A certificate of compliance with the requirements of this section.

7. The information required under subsections 5 and 6 must be provided in a format prescribed by the Commissioner or in a substantially similar format approved by the Commissioner.

8. Guaranteed issue and guaranteed renewability do not apply to a policy of stop-loss insurance governed by this section.

9. As used in this section:

(a) “Actively-at-work exclusion” means the exclusion of a natural person, including, without limitation, an employee or nonemployee of the small employer, who is a member of the group health plan offered by a small employer from coverage because the natural person is:

(1) An employee of the small employer; and

(2) Is not actively at work as a result of the use of earned leave.

(b) “Attachment point” means the amount of claims incurred by an insured group beyond which an insurer incurs a liability for payment.

~~{(b)}~~ (c) “Expected claims” means the amount of claims that, in the absence of a *policy for stop-loss ~~{policy}~~ insurance* or other insurance, are projected to be incurred by an insured group through its *group* health plan.

~~{(e)}~~ “~~Stop-loss~~”

(d) “*Group health plan*” has the meaning ascribed to it in NRS 689B.390.

(e) “*Health care expenses*” means the expenses of a group health plan associated with the delivery of services for health care that are analogous to the incurred losses of an insurer.

(f) “*Lasering*” means:

(1) *Assigning a different attachment point for a natural person, including, without limitation, an employee or nonemployee of a small employer, based on his or her expected claims or diagnosis;*

(2) *Assigning a deductible to a natural person, including, without limitation, an employee or nonemployee of a small employer, that must be met before coverage under a policy of stop-loss insurance applies;*

(3) *Denying coverage under a policy of stop-loss insurance to a natural person, including, without limitation, an employee or nonemployee of a small employer, who is otherwise covered by the group health plan provided by the small employer; or*

(4) *Applying an actively-at-work exclusion to a policy of stop-loss insurance.*

(g) “*Policy for stop-loss insurance*” means insurance purchased by ~~{an}~~ *a small* employer to limit exposure to claim expenses under a *group* health ~~{benefit}~~ plan provided by the *small* employer.

(h) “*Small employer*” has the meaning ascribed to it in NRS 689C.095.

(i) “Specific attachment point” means the amount of claims incurred per natural person, including, without limitation, an employee or nonemployee of a small employer, who is a member of the insured group beyond which an insurer incurs a liability for payment.

(j) “Termination date” means a date upon which a policy for stop-loss insurance is terminated before the end date contractually provided in the policy for stop-loss insurance.

Sec. 3. NAC 689C.250 is hereby repealed.

TEXT OF REPEALED SECTION

689C.250 Policies for stop-loss insurance. (NRS 679B.130, 689C.155, 689C.940)

1. An insurer shall not issue a policy for stop-loss insurance that:

(a) Has an annual attachment point for claims incurred per individual that is lower than \$10,000;

(b) Has an annual aggregate attachment point for groups of not more than 50 persons that is lower than the greater of:

(1) The number of group members times \$4,000;

(2) One hundred and twenty percent of expected claims; or

(3) Ten thousand dollars.

2. For the purposes of this section, an insurer shall determine the number of persons in a group on a consistent basis at least annually.

3. If a policy for stop-loss insurance does not meet the criteria set forth in this section, the policy will be deemed to be a health benefit plan for the purposes of this chapter and chapter 689C of NRS.

4. As used in this section:

(a) “Attachment point” means the amount of claims incurred by an insured group beyond which an insurer incurs a liability for payment.

(b) “Expected claims” means the amount of claims that, in the absence of stop-loss insurance or other insurance, are projected to be incurred by an insured group through its health plan.

(c) “Stop-loss insurance” means insurance purchased by an employer to limit exposure to claim expenses under a health benefit plan provided by the employer.