

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066**

LCB FILE NO. R186-22

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Insurance (“Division”) for adopted amendments to Nevada Administrative Code (“NAC”) Chapters 689B.350, 695B.250, and 689C.250.

1. A clear and concise explanation of the need for the adopted regulation.

Under a self-insured plan option, the employer takes on the financial risk of paying claims for covered benefits. The employer may additionally purchase a stop-loss insurance plan, which protects the employer against large, unpredictable claims above a specified level during a given year. This level, known as the aggregate attachment point, is the dollar amount that triggers the end of the employer’s liability, and where the stop-loss insurer begins to pay for claims incurred by the group covered.

Although self-funding has traditionally been more prevalent among large employers, small employers have become more attracted to it because such plans are exempt from many regulatory requirements, including some of the new rules under the Affordable Care Act (“ACA”). For example, self-funded plans are not subject to the ACA’s essential health benefit requirements and premium rating rules (including the law’s prohibition on health status and gender rating), and are not required to pay the annual fee that insurers must pay on fully insured products.

Self-insured plans do potentially create greater risk to small employers. Small employer is defined pursuant to NRS 689C.095 and 42 U.S.C. § 18024(b)(2) as an employer who employed an average of at least 1 but not more than 50 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the event that the group’s health status declines, the stop-loss insurer may drastically raise premiums, or even refuse to renew coverage, as the change in health status makes the group more expensive to cover.

This proposed regulation makes similar changes to the Nevada Administrative Code (NAC) 689B.350, Group and Blanket Health Insurance, 695B.250, Health Insurance for Small Employers, and 689C.250, Nonprofit Corporations for Hospital, Medical, and Dental Service. The proposed regulation amends these sections of the NAC by updating the stop-loss requirements to prohibit a policy from providing first dollar health coverage of an individual, instituting a minimum annual attachment point for claims incurred per individual, increasing the annual attachment point for claims for small employer groups, prohibiting a policy for stop-loss insurance that is issued to a small employer from lasering (so unhealthy employees do not adversely impact the fully-insured markets), requiring issuance of a uniform disclosure form (to help make employers better informed of the risks they are assuming in a self-insured plan), and requiring an insurer to provide the Commissioner with certain information on an annual basis.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how public comment was solicited:

Public comment was solicited by emailing the proposed regulation, notice of workshop, notice of intent to act upon the regulation, and small business impact statement to persons on the Division’s mailing list requesting notification of proposed regulations. The documents were also made available on the website of the Division, <http://doi.nv.gov/>, the website of the Nevada Legislature, <http://www.leg.state.nv.us>, and the Nevada Public Notice website, <http://www.notice.ng.gov>. The documents were also emailed, or mailed where no email address was available, to the main library for each county in Nevada.

Public comment was also solicited at the workshops held on March 4, 2019, October 28, 2021, January 19, 2022, and at the hearing held on November 10, 2022. The public workshops took place virtually via Webex with the exception of the workshop held on March 4, 2019. The public hearing took place virtually via Webex.

(b) A summary of the public response: The Division has received comments concerning the proposed regulation on a variety of aspects including, the minimum employee requirement, the specific and aggregate attachment points, required education and training, lasering, the possible disruption to the fully funded small group market, and the disclosure form.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the public comments and testimony that transpired with regard to regulation R186-22. A copy of said summary may be obtained by e-mail request to regs@doi.nv.gov.

3. The number of persons who:

- (a) Attended the hearing: 22
- (b) Testified at the hearing: 4
- (c) Submitted to the agency written statements: 5

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

Testified at the hearing:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Jeremey Gladstone	NV Division of Insurance	1818 College Pkwy, Suite 103, Carson City, NV 89706	775-687-0729	Jgladstone@doi.gov
Mike Dillon	Dillon Health	329 Flint St, Reno, NV 89501	775-829-2494	mdillon@dillonhealth.com

Heidi Sterner	Nevada Association of Health Underwriters	59 Damonte Ranch Pkwy, Suite B141 Reno NV 89521	702-328-9763	heidijsterner@gmail.com
Jack Kim	UnitedHealthCare Insurance Company	2720 N Tenaya Way Las Vegas, NV 89128	(866) 574-6088	Jack.kim@uhc.com

Submitted to the agency written statements:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Rachel Rizzi	Branch Benefits Consultants	4584 N. Rancho Dr., Las Vegas, NV 89130	702-646-2082	rrizzi@bbc-ins.com
Chris Carothers	Nevada Association of Health Underwriters	59 Damonte Ranch Pkwy, Suite B141 Reno NV 89521	702-385-3684	ccarothers@carothersins.com
Renee Shiller James Slotnick	FullScopeRMS a business unit of Sun Life US Operation	110 Worcester Street Wellesley Hills, MA 02481	860-737-1623	renee.shiller@fullscoperms.com
Adam Brackemyre	Self-Insurance Institute of America, Inc.	P.O. Box 1237, Simpsonville, SC 29681	202-595-0641	abrackemyre@siia.org
Frank Nolimal	Assurance LTD	5740 S Arville St, Suite 204 Las Vegas, NV 89118-3071	702-768-3705	FNolimal@AssuranceLtd.com
Michael Dillon	Dillon Health	329 Flint St, Reno, NV 89501	775-560-7006	mdillon@dillonhealth.com
Tracey Woods	Anthem Blue Cross Blue Shield	9133 W Russel Rd Las Vegas, NV 89148	775-386-3725	tracey.woods@anthem.com

5. A description of how comments were solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how comments were solicited from affected businesses:

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description provided above in response to #2(a).

In addition to the methodology described in #2(a), the Division sent a survey to the 110 interested parties in Nevada to determine the effect of proposed changes to NAC 689B.350. Responses were received from January 8th through January 30th of 2018.

The Division also sent a survey to 11 Chambers of Commerce across Nevada, asking their membership to provide input on the perceived impact of the proposed regulation.

As part of the rule making procedure, the Division conducted public workshops on March 4, 2019, October 28, 2021, January 19, 2022, and at the hearing held on November 10, 2022. The public workshops took place virtually via Webex with the exception of the workshop held on March 4, 2019. The public hearing took place virtually via Webex. The public was given opportunity to offer feedback on the potential impact of the proposed regulation. During the November 10, 2022 hearing, Division staff specifically asked for feedback on the impact that the proposed regulation could have on small businesses. The Division did not receive any feedback at the hearing or during past workshops which would impact the original small business impact or would cause the Division to alter the findings of the small business impact previously drafted.

(b) A summary of the responses from affected businesses:

The Division received a total of 45 responses; 10 of the responders met the definition of a small employer¹ under Nevada law, two (2) met the definition of a large business, nine (9) responders were insurance companies, and 23 responders were brokers. Of these responses, seven (7) insurance companies, 12 brokers, and 12 of the businesses have participated in the stop-loss market in the last year. Comments received from insurance brokers and companies tended to mirror the business markets they specialize in.

In reviewing and compiling the results of the survey, Division staff noticed that several of the written responses were identical. Therefore, Division staff determined that the responses were not independent and could not be fully relied upon as a reflection of the mindset of individual interested parties but may reflect the opinions of the business segment in which the individuals specialized.

Responses from those who participate in the self-insured "stop-loss" market supported loosening of rules to allow more small businesses to enter the self-insured market. Those insurers and brokers that primarily participate in the fully-insured market opposed making any changes that would loosen stop-loss rules. Their primary argument is, since stop-loss policies can underwrite based upon health status, this market would attract healthier groups, thus creating deterioration in Nevada's fully-insured small group insurance pool.

Employers that are currently self-funding their health care expenses have generally experienced positive results and feel that it provides the opportunity for significant savings over a fully-insured market. Small employers surveyed highlighted two changes from this proposed regulation that they feel would have the greatest financial effect on them. The first is the addition of a requirement to impose a minimum group size limit on employers eligible for stop-loss insurance. There is no current limit in Nevada, although other states include minimum group size in their laws.

¹"Small business", pursuant to [NRS 233B.0382](#), means a business conducted for profit which employs fewer than 150 full-time or part-time employees. "Small employer" is a type of small business defined pursuant to NRS 689C.095 to be an employer who employed an average of at least 1 but not more than 50 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

The proposed change receiving the second largest number of comments was increasing the minimum individual attachment point from \$10,000 to \$20,000. Based on unique responses, interested parties were split on the individual attachment point; with several responders supported increasing the limit to \$20,000, some suggested a limit of \$10,000 or less and a few suggested a limit of \$40,000 or higher would be appropriate.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 5(b) above reflects the public comments and testimony that transpired with regard to regulation R186-22. A copy of said summary may be obtained by e-mail request to regs@doi.nv.gov.

6. If after consideration of public comments, the regulation was adopted without changing any part of the proposed regulation, provide a summary of the reasons for adopting the regulation without change.

The current version of the proposed regulation is the result of a collaborative effort between the Division and various interested parties including, carriers, producers, associations, trade groups, and employer groups. The Division considered all public comments and feedback as part of the rulemaking process and has determined that the proposed regulation represents a reasonable compromise based on the feedback received while still implementing the necessary protections for the small employer groups that will be purchasing these products.

7. (a) The estimated economic effect of the adopted regulation on the business which it is to regulate:

(1) Both adverse and beneficial effects:

- i. Beneficial: The provisions of the proposed regulation will allow insurance carriers to offer employer groups health plan options that may be more attractive and perhaps fit their needs more effectively while adding greater protections for those small group employers that choose to purchase stop-loss products.
- ii. Adverse: The Division anticipates a small impact from this regulation for insurance carriers. The impact will be minimized given that most carriers operate in states outside of Nevada that have already adopted many of these provisions. The inclusion of the requirement to submit certain information to the Commissioner on an annual basis should have little impact.

(2) Both immediate and long-term effects:

- i. Immediate: These plans are not new to the market but have seen a renewed interest. The provisions of the proposed regulation will allow insurance carriers to offer employer groups health plan options that may be more attractive and perhaps fit their needs more effectively.
- ii. Long-Term: The long-term effect is unknown as this is an ever-changing market and new products are introduced all the time. The regulation will continue to support the stop-loss market that is currently in place.

(b) The estimated economic effect of the adopted regulation on the public:

- (1) Both adverse and beneficial effects:
 - i. Beneficial: The provisions of this regulation will provide individual consumers and employer groups with clarification of the requirements and protections afforded to stop-loss policies in Nevada. These protections, as well as renewed interest in these policies, could potentially increase marketing of these policies in the group employer market. Stop-loss contracts may become more common and create an attraction among employer groups. This could also encourage additional employers to provide health coverage to their employees.
 - ii. Adverse: The Division does not anticipate an adverse impact on the public.
- (2) Both immediate and long-term effects:
 - i. Immediate: The Division does not anticipate an adverse impact on the public.
 - ii. Long-Term: The Division does not anticipate an adverse impact on the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

The proposed regulation places specific requirements on the structure of the policy itself rather than on the Division. There is the requirement on the carrier to submit information to the Commissioner upon her request. However, the Division does not anticipate any additional costs from the proposed regulations.

9. A description of any regulations of other state or government 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, the name of the regulating federal agency.

The regulation does not overlap or duplicate any existing federal, state, or local standards and is not more stringent than any existing federal, state or local standards.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

The regulation does not include provisions that are more stringent than a federal regulation.

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does not establish a new fee or increase an existing fee.