ADOPTED TEMPORARY REGULATION OF THE COMMISSIONER OF INSURANCE

LCB FILE NO. T005-23A

The following document is the adopted temporary regulation submitted by the agency on 05/23/2023

ADOPTED

PROPOSED TEMPORARY

REGULATION OF THE

COMMISSIONER OF INSURANCE

LCB File No. T005-23

November 17, 2022

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

AUTHORITY: NRS 679B.130(1); 687B.490(2).

A REGULATION relating to insurance; requiring that a network plan satisfy certain requirements before the Commissioner of Insurance ("Commissioner") can determine that such network plan is adequate for sale in this State; and providing for other matters properly relating thereto.

Section 1. NAC 687B.768 is hereby amended to read as follows:

1. ***Except as outlined in subsection 2,*** in order for the Commissioner to determine that a network plan made available for sale in this State is adequate, the network plan must contain, at a minimum:

(a) Evidence that the network plan provides reasonable access to at least one provider in the specialty area listed in the following table for at least 90 percent of enrollees by complying with the area designations for the maximum time or distance standards in the following table:

Specialty Area	Maximum Time or Distance Standards (Minutes/Miles)			
	Metro	Micro	Rural	Counties with Extreme Access Considerations (CEAC)
Primary Care	15/10	30/20	40/30	70/60
Endocrinology	60/40	100/75	110/90	145/130
Infectious Diseases	60/40	100/75	110/90	145/130
Oncology - Medical/Surgery	45/30	60/45	75/60	110/100
Oncology - Radiation/Radiology	60/40	100/75	110/90	145/130
Psychiatrist	45/30	60/45	75/60	110/100
Psychologist	45/30	60/45	75/60	110/100

Licensed Clinical Social Workers (LCSW)	45/30	60/45	75/60	110/100
Pediatrics	25/15	30/20	40/30	105/90
Rheumatology	60/40	100/75	110/90	145/130
Hospitals	45/30	80/60	75/60	110/100
Outpatient Dialysis	45/30	80/60	90/75	125/110

(b) Evidence that the network plan:

(1) Contracts with at least **[~~30~~]** ***35*** percent of the essential community providers in the service area of the network plan that are available to participate in the provider network of the network plan;

(2) Offers contracts in good faith to all available essential community providers in all counties in the service area of the network plan that are designated pursuant to subsection 3 as Counties with Extreme Access Considerations;

(3) Offers contracts in good faith to all available Indian health care providers in the service area of the network plan, including, without limitation, the Indian Health Service, Indian Tribes, tribal organizations and urban Indian organizations, as defined in 25 U.S.C. § 1603, which apply the special terms and conditions necessitated by federal statutes and regulations as referenced in the *Model Qualified Health Plan Addendum for Indian Health Care Providers*. A copy of the *Model Qualified Health Plan Addendum for Indian Health Care Providers* may be obtained free of charge at the Internet address **https://www.qhpcertification.cms.gov/s/ECP%20and%20Network%20Adequacy**; and

(4) Offers contracts in good faith to at least one essential community provider in each category of essential community provider in the following table, in each county in the service area of the network plan, where an essential community provider in that category is available and provides medical or dental services that are covered by the network plan:

Major ECP Category	ECP Provider Types
Family Planning Providers	Title X Family Planning Clinics and Title X "Look-Alike" Family Planning Clinics
Federally Qualified Health Centers (FQHCs)	Federally Qualified Health Centers and Federally Qualified Health Center "Look-Alike" Clinics, Outpatient health programs/facilities operated by Indian tribes, tribal organizations, programs operated by Urban Indian Organizations
Hospitals	Disproportionate Share Hospitals (DSH) and DSH-eligible Hospitals, Children's Hospitals, Rural Referral Centers, Sole Community Hospital, Freestanding Cancer Centers, Critical Access Hospitals
Indian Health Care Providers	Indian Health Service providers, Indian Tribes, Tribal organizations, and urban Indian Organizations
Ryan White Providers	Ryan White HIV/AIDS Program Providers

Other ECP Providers	STD Clinics, TB Clinics, Hemophilia Treatment Centers, Black Lung Clinics, Community Mental Health Centers, Rural Health Clinics, and other entities that serve predominantly low-income, medically underserved individuals

2. For a stand-alone dental plan or a health benefit plan that offers oral pediatric services being offered to satisfy the essential health benefits requirements under 42 U.S.C. § 18022 subsection (b)(1)(J), the network must contain, at minimum:

(a) Evidence that the network plan provides reasonable access to at least one provider in the specialty area listed in the following table for at least 90 percent of enrollees by complying with the area designations for the maximum time or distance standards in the following table:

Specialty Area	*Maximum Time or Distance Standards (Minutes/Miles)*			
	Metro	*Micro*	*Rural*	*Counties with Extreme Access Considerations (CEAC)*
General Dentist	*45/45*	*60/60*	*100/120*	*100/120*
Periodontist	*45/45*	*60/60*	*100/120*	*100/120*
Oral Surgeon	*45/45*	*60/60*	*100/120*	*100/120*
Orthodontist	*45/45*	*60/60*	*100/120*	*100/120*

(b) Evidence that the network plan:

(1) Contracts with at least 35 percent of the essential community providers in the service area of the network plan that are available to participate in the provider network of the network plan; and

(2) Offers contracts in good faith to all available Indian health care providers in the service area of the network plan, including, without limitation, the Indian Health Service established pursuant to 25 U.S.C. § 1661, and Indian tribes, tribal organizations, and urban Indian organizations, as defined in 25 U.S.C. § 1603, which apply the special terms and conditions necessitated by federal statutes and regulations as referenced in the Model Qualified Health Plan Addendum for Indian Health Care Providers. A copy of the Model Qualified Health Plan Addendum for Indian Health Care Providers may be obtained free of charge at the Internet address https://www.qhpcertification.cms.gov/s/ECP%20and%20Network%20Adequacy.

[~~2.~~] ***3.*** To offer a contract in good faith pursuant to paragraph (b) of subsection 1, a network plan must offer contract terms comparable to the terms that a carrier or other person or entity which issues a network plan would offer to a similarly situated provider which is not an essential community provider, except for terms that would not be applicable to an essential community provider, including, without limitation, because of the type of services that an essential community provider provides. A network plan must be able to provide verification of such offers if the Commissioner requests to verify compliance

with this policy.

[~~3.~~] ***4.*** For the purposes of this section, the area designations for the maximum time or distance standards are based upon the population size and density parameters of individual counties within the plan's service area. The population and density parameters applied to determine county type designations are listed in the following table:

County Type	Population	Density
Metro	≥ 1,000,000	10 - 999.9/mi^2
	500,000 - 999,999	10 - 1,499.9/mi^2
	200,000 - 499,999	10 - 4,999.9/mi^2
	50,000 - 199,999	100 - 4,999.9/mi^2
	10,000 - 49,999	1,000 - 4,999.9/mi^2
Micro	50,000 - 199,999	10 - 49.9/mi^2
	10,000 - 49,999	50 - 999.9/mi^2
Rural	10,000 - 49,999	10 - 49.9/mi^2
	< 10,000	10 - 4,999.9/mi^2
Counties with Extreme Access Considerations or CEAC	Any	< 10/mi^2

[~~4.~~] ***5.*** As used in this section:

(a) "Essential community provider" or "ECP" means a provider of healthcare that serves predominantly low-income, medically underserved individuals. The term includes, without limitation:

(1) Health care providers described in section 340B(a)(4) of the Public Health Service Act, 42 U.S.C. § 256b(a)(4), as amended;

(2) Entities described in section 1927(c)(1)(D)(i)(IV) of the Social Security Act, 42 U.S.C.§ 1396r-8(c)(1)(D)(i)(IV), as amended, including, without limitation, state-owned family planning service sites, governmental family planning service sites or not-for-profit family planning service sites that do not receive funding that qualifies the service for the drug pricing program established pursuant to section 340B of the Public Health Service Act, 42 U.S.C. § 256b, as amended, without limitation, funding pursuant to Title X of the Public Health Service Act, 42 U.S.C. § 300 et seq., as amended; or

(3) Indian health care providers,

➥ unless any of the providers or entities listed in subparagraphs (1), (2) and (3) has lost its status as a provider described in section 340B(a)(4) of the Public Health Service Act, 42 U.S.C. § 256(b)(a)(4), as amended, or as an entity described in section 1927(c)(1)(D)(i)(IV) of the Social Security Act, 42 U.S.C. § 1396r-8(c)(1)(D)(i)(IV), as amended, as a result of violating Federal law.

(b) "Maximum time or distance standards" means the maximum time or distance an individual should have to travel to see a provider of health care based on the area designation determined pursuant to subsection 3.

(c) "Stand-alone dental plan" means a plan for dental care as defined by NRS 695D.070 that is not part of a health benefit plan as defined by NRS 689C.075.

Sec. 3. This regulation becomes effective on January 1, 2024.

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

LCB FILE NO. T005-23

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") Chapter(s) 687B.

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

This regulation is needed to codify network adequacy standards for Plans for Dental Care, which previously have only existed as guidance which are not binding on insurers. Additionally, Essential Community Provider requirements are being updated to conform to federal standards.

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 temporary 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 workshop held on April 18, 2023, and at the hearing held on May 2, 2023. The public workshop and hearing took place virtually via Webex.

(b) A summary of the public response:

There was no public response

(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 temporary regulation T005-23. 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: __14__
(b) Testified at the hearing: _1___

(c) Submitted to the agency written statements: __0__

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
Jack Childress	Nevada Division of Insurance	1818 E. College Pkwy., Ste. 103, Carson City, NV 89706	775.687.0731	jchildress@doi.nv.gov

Submitted to the agency written statements: N/A

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address

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).

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

There was no response from affected business.

(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 temporary regulation T005-23. 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.

There were no public comments.

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: Carriers may be able to attract more consumers due to an expanded number of providers in their network. Carriers will be able to better measure members' needs and use of particular providers to better plan, which should, because of estimated efficiency, positively impact insurers' financial outlook.

ii. Adverse: Health insurance carriers will be required to demonstrate network plan adequacy based on network adequacy standards in the regulation. Carriers likely will have to adjust network plans to meet member needs. Carriers might have to add additional healthcare providers to their current network plan designs.

(2) Both immediate and long-term effects:

i. Immediate: Carriers may be able to attract more consumers due to an expanded number of providers in their network.

ii. Long-Term: Carriers will be able to better measure members' needs and use of particular providers to better plan, which should, because of estimated efficiency, positively impact insurers' financial outlook.

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

(1) Both adverse and beneficial effects:

i. Beneficial: Once these additional network adequacy standards are implemented, because of the revised standards, policyholders should be able to more reasonably access in-network versus out-of-network care. This should, in turn, help policyholders limit their accessing out-of-network providers, which can lead to higher costs. A broader base of "in network" healthcare providers should help policyholders access in-network care, which reduces the policyholders' out-of-pocket costs.

ii. Adverse: As carriers obtain experience data, there may be a learning curve that could impact members' abilities to access care as quickly as hoped.

(2) Both immediate and long-term effects:

i. Immediate: As carriers obtain experience data, there may be a learning curve that could impact members' abilities to access care as quickly as hoped.

ii. Long-Term: A broader base of "in network" healthcare providers should help policyholders access in-network care, which reduces the policyholders' out-of-pocket costs.

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

None

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.

Not applicable; there are no such overlapping or duplicated regulations.

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

Not applicable; there is no national standard for network adequacy.

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.

Not applicable; no fees are established or increased.

STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INSURANCE

Determination of Necessity of Small Business Impact Statement NRS 233B.0608(1)

NETWORK ADEQUACY STANDARDS PLAN YEAR 2024

EFFECTIVE DATE OF REGULATION:
January 1, 2024

1. BACKGROUND.

The regulation was proposed pursuant to NRS 687B.490. The regulation amends Nevada Administrative Code ("NAC") 687B, providing standards for measuring the adequacy of a network plan to ensure that health plan consumers can reasonably access certain providers.

The Adequacy of Network Plans section of NAC Chapter 687B provides the Commissioner of Insurance ("Commissioner") authority to establish a Network Adequacy Advisory Council ("Council") to provide annual recommendations regarding standards used to measure network plan adequacy.

On March 8, 2022, the Council conducted its first meeting for plan year 2024. The nine-member Council held a total of four (4) public meetings during which they conducted discussions, reviewed data, and received public input related to network adequacy. Meeting recordings and supporting documents presented during the meetings are available on the Nevada Division of Insurance ("Division") website at doi.nv.gov. On September 8, 2022, a report including the Council's network adequacy recommendations was submitted to the Commissioner. Based on the Commissioner's review of the report, the Commissioner seeks to promulgate this regulation to enact network adequacy standards.

The proposed regulation also incorporates network adequacy guidance related to network adequacy standards for stand-alone dental plans or a health benefit plan offering oral pediatric services as part of the essential health benefits required under 42 U.S.C. § 18022 subsection (b)(1)(J), which has been in place since 2016. This regulation promulgation will ensure that individuals who purchase a stand-alone dental plan or a health benefit plan with oral pediatric service will have adequate access to providers when seeking care.

2. DESCRIPTION OF SOLICITATION SHOWING A CONCERTED EFFORT. NRS 233B.0608(1).

Since the implementation of the Affordable Care Act, the Division has issued guidance and promulgated regulations related to network adequacy. In doing so, to gather relevant information, the Division has held numerous public meetings. To date, the Division has received no comments suggesting that quantifying network adequacy standards in a regulation would negatively impact small businesses. Additionally, the Council's meetings are public and include extensive discussion over network adequacy—at no time during the public meetings conducted for plan years 2018 through 2024 were any comments received that the proposed network adequacy standards would negatively impact small businesses. To determine the

proposed regulation's reach, the Division has also extensively analyzed and conducted research on network adequacy standards.

3. 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).

   ☒ NO ☐ YES

4. HOW WAS THAT CONCLUSION REACHED? NRS 233B.0608(3).

Based on analysis conducted by Division subject matter expert staff, because many network plans already meet the proposed standards, the Division opines that the proposed regulation's impact on small business will be minimal to none. Further, the Division has held numerous public meetings regarding this matter. To date, the Division has received no comments suggesting that quantifying network adequacy standards in a regulation would negatively impact small businesses. Additionally, the Council's meetings are public and include extensive discussion over network adequacy—at no time during the public meetings conducted for plan years 2018 through 2024 were any comments received that the proposed network adequacy standards would negatively impact small businesses.

I, Nick Stosic, Commissioner of Insurance for the State of Nevada, hereby 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 this statement is accurate. (NRS 233B.0608(3)).

1/12/2023
(DATE)

Nick Stosic
Interim Commissioner of Insurance

Small Business Impact Statement
NRS 233B.0608(2)-(4) and 233B.0609

NETWORK ADEQUACY STANDARDS PLAN YEAR 2024

1. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES. NRS 233B.0609(1)(a).

Since the implementation of the Affordable Care Act, the Division has issued guidance and promulgated regulations related to network adequacy. These activities have involved numerous public meetings concerning network adequacy. To date, the Division has received no comments that suggest that quantifying network adequacy standards in a regulation would negatively impact small businesses. Additionally, the Network Adequacy Advisory Council's meetings are public and include extensive discussion over network adequacy and at no time during the public meetings conducted for plan years 2018 through 2024 were any comments received that the proposed network adequacy standards would negatively impact small businesses.

To obtain a copy of public comments filed for this proposed regulation, contact the Nevada Division of Insurance, at 775-687-0700 or regs@doi.nv.gov.

2. HOW WAS THE ANALYSIS CONDUCTED? NRS 233B.0609(1)(b).

Division personnel deemed subject matter experts analyzed the impact to small businesses based on past regulations related to network adequacy, public meetings, and discussions. No public comments have been received related to this proposed regulation. Upon receipt of any comments from the small business community, the Division personnel responsible for this analysis will review the comments submitted and reconsider the anticipated impact to small businesses.

3. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE. NRS 233B.0609(1)(c).

(a) BOTH ADVERSE AND BENEFICIAL EFFECTS.

(1) Adverse: The Division does not anticipate an adverse economic effect on small businesses.

(2) Beneficial: Some Providers that qualify as small businesses may have more opportunities, options, or negotiating power due to being newly included in possible expansions of provider networks.

(b) BOTH DIRECT AND INDIRECT EFFECTS.

(1) Direct: Providers that qualify as small businesses may have more opportunities, options, or negotiating power when contracting with health insurance networks.

(2) Indirect: Small businesses that use these networks may have greater access to certain providers of healthcare.

4. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES. NRS 233B.0609(1)(d).

The Division does not anticipate an impact on small businesses; therefore, methods to reduce impact is not necessary.

5. ESTIMATED COST OF ENFORCEMENT. NRS 233B.0609(1)(e).

The Division anticipates no additional costs for enforcement.

6. FEE CHANGES. NRS 233B.0609(1)(f).

No new or additional fees are established.

7. DUPLICATIVE PROVISIONS. NRS 233B.0609(1)(g).

There are no other regulations that overlap or duplicate the regulation.

8. REASONS FOR CONCLUSIONS. NRS 233B.0609(1)(h).

The Division's analysis of network benefits currently offered in Nevada would indicate that the benefits added by the proposed regulation are currently offered by many network plans and, therefore, will have a minimal impact, if any, on the small business community.

I, Nick Stosic, Commissioner of Insurance for the State of Nevada, hereby 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 this statement was properly prepared, and the information contained herein is accurate. (NRS 233B.0609(2))

__1/12/2023_____
(DATE)

Nick Stosic
Interim Commissioner of Insurance