

Chapter 686A of NAC

**PROPOSED TEMPORARY REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. T008-10

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON
PROPOSED TEMPORARY REGULATIONS**

The State of Nevada Department of Business and Industry, Division of Insurance (“Division”), (775) 687-0700, is proposing the adoption of temporary regulations pertaining to chapters 686A and 689A of the Nevada Administrative Code (“NAC”). A workshop will be held **following the conclusion of scheduled regulation hearings set for 9:30 a.m. on November 23, 2010**, at the Nevada State Health Division, 4150 Technology Way, Suite 303, Hearing Room, Carson City, Nevada 89706. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, 2nd Floor Conference Room, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed temporary regulations.¹ Please submit any written comments no later than November 16, 2010.

Child Only Policies. All carriers in Nevada have stopped issuing individual health benefit plans to children under the age of 19 in response to the recently enacted federal health care reform law which prohibits preexisting condition limitations or exclusions for these children. Carriers are concerned that insurance for children with medical conditions will be purchased for brief periods of time when medical care is needed. Establishing a fixed open enrollment period for these children will provide a level playing field for all carriers and help mitigate adverse selection risk.

The proposed temporary regulation will establish an open enrollment period during the month of January for the issuance of child only policies. Carriers offering child only policies will be required to offer coverage under a Basic or Standard health benefit plan to children under the age of 19 who apply for coverage during the open enrollment period. An individual carrier is not required to issue a policy to a child eligible for coverage as a dependent under a group health plan.

Fees For Service. The proposed temporary regulation will amend NAC 686A.330 and 686A.335 to allow an agent acting as a broker to collect fees paid by the client for the providing of services as agreed in a written contract. These fees may be in

¹ NRS 233B.063(3) An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

addition to or in lieu of commissions paid by the insurer.

A copy of all materials relating to the proposals may be obtained at the workshop or by contacting the Division, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, (775) 687-0704. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Temporary Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at or provided to the following locations:

Department of Business and Industry
Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706

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

Capitol Press Room
Capitol Building Basement
Carson City, NV 89710

Donald W. Reynolds Press Center
102 North Curry Street
Carson City, NV 89701

Legislative Counsel Bureau
401 South Carson Street
Carson City, NV 89701

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Blasdel Building
209 East Musser Street
Carson City, NV 89701

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

Office of the Governor
Capitol Building
Carson City, NV 89710

Carson City Courthouse
885 East Musser Street
Carson City, NV 89701

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

Churchill County Library
553 South Main Street
Fallon, NV 89406

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

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

Elko County Library
720 Court Street
Elko, NV 89801

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

Eureka Branch Library
P.O. Box 293

Humboldt County Library
85 East 5th Street

NOTICE OF INTENT TO ACT UPON TEMPORARY REGULATION

Notice of Hearing for the Adoption of Temporary Regulations of The Department of Business and Industry, Division of Insurance²

The State of Nevada Department of Business and Industry, Division of Insurance (“Division”), will hold a public hearing at **1:30 p.m. on December 14, 2010**, at the offices of the Nevada State Health Division, 4150 Technology Way, Suite 303, Hearing Room, Carson City, Nevada 89706. Interested persons may also participate through a simultaneous video-conference 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 of the regulation that pertains to chapter 686A of the Nevada Administrative Code (“NAC”).

The following information is provided pursuant to the requirements of Nevada Revised Statute (“NRS”) 233B.0603:

1. This temporary regulation is necessary to include “group health insurance” as a type of insurance. This additional language will allow agents, acting as a broker on behalf of a business, the flexibility to collect a commission paid by the insurer or a fee paid by the client or a combination of both commission and fees.
2. This temporary regulation amends NAC 686A.330 by eliminating the prohibition of the charging of service fees on group health insurance. NAC 686A.335 is amended to include “group health insurance” for the charging of fees for service. Additionally, the term “also licensed” is being replaced by the word “acting”. No other changes to these existing regulations have been made.
3. The estimated economic effect of the temporary regulation:

On the business that it is to regulate: The proposed temporary regulation will reduce or eliminate commissions paid by insurers to agents acting as a broker on behalf of a business. Insurers will need to file new rates with the Division reflecting any changes they decide to make to the agent commission structure.

On the public: The proposed temporary regulation should have a positive economic impact on the public. A business will have the opportunity to negotiate fees charged by an agent acting as a broker for the providing of services either in addition to or in lieu of commissions paid by an insurer. This should result in a reduction of premiums charged and provide transparency of the actual fees and assist the business in making decisions on how best to manage the group health insurance they provide to their employees.

² NRS 233B.063(3) An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

4. There should be no additional cost to the Division.
5. The proposed temporary regulation does not overlap or duplicate any other regulations of other state or local governmental agencies.
6. This proposed regulation is not pursuant to federal law.
7. There are no federal regulations relevant to this activity.
8. The proposed regulation does not establish a new fee or increase an existing fee.
9. This regulation will have a positive affect on small businesses by allowing agents acting as brokers to charge fees for services provided either in addition to or in lieu of commissions. This direct contract will provide the small business with transparency of fees charged and may reduce the premiums charged by the insurer by carving out or reducing commissions. The cost to the Division of Insurance to enforce this amendment is minimal.

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 E. College Parkway, Suite 103, Carson City, Nevada 89706. **Written submissions must be received by the Division on or before November 16, 2010.** 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 temporary regulation to be adopted 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 temporary regulation to be adopted will be available at the offices of the Division, 1818 E. 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 temporary 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://www.leg.state.nv.us/register>. Copies of this notice and the proposed temporary regulation will also 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.

This notice of hearing has been posted at or provided to the following locations:

Department of Business and Industry
Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706

Capitol Press Room
Capitol Building Basement
Carson City, NV 89710

Legislative Counsel Bureau
401 South Carson Street
Carson City, NV 89701

Blasdel Building
209 East Musser Street
Carson City, NV 89701

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Capitol Building
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Carson City Library
900 North Roop Street
Carson City, NV 89701

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

Elko County Library
720 Court Street
Elko, NV 89801

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

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

Lyon County Library
20 Nevin Way
Yerington, NV 89447

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

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Carson City, NV 89701

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Fallon, NV 89406

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Minden, NV 89423

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

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

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

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

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

Storey County Public Library
P.O. Box 14
Virginia City, NV 89440

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

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

White Pine County Library
950 Campton Street
Ely, NV 89301

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, or by calling no later than five (5) working days prior to the hearing, (775) 687-0704.

DATED this 4th day of November, 2010.

/s/
BRETT J. BARRATT
Commissioner of Insurance

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LCB File No. T008-10

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

AUTHORITY: NRS 679B.130 and 686A.230.

A REGULATION relating to the charging of fees for service by an agent who is acting as a broker of group health insurance, casualty, property or surety insurance.

Section 1. NAC 686A.330 is hereby amended to read as follows:

1. Any agreement for consultation or related advice which is entered into by a financial planner, life or health insurance agent or broker, or insurance consultant must be in writing and must contain:

(a) The name and address of the financial planner, life or health insurance agent or broker, or insurance consultant;

(b) The name and address of any person or entity licensed pursuant to title 57 of NRS which he represents;

(c) A description of any license he holds;

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

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

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

2. Each client or prospective client of a financial planner, life or health insurance agent or broker, or insurance consultant must be provided with a copy of the agreement.

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 ~~to:~~

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

~~—(b) Group health products provided pursuant to chapter 689B of NRS.]~~

Sec. 2. NAC 686A.335 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, an agreement for consultation or related advice which is entered into by an agent who is *acting* ~~[also licensed]~~ as a broker of *group health insurance*, casualty, property or surety insurance may, with respect to *group health insurance*, property, casualty or surety insurance that the agent sells to businesses, provide for the agent to receive:

(a) A commission paid by the insurer;

(b) A fee paid by the client; or

(c) A combination of a commission paid by the insurer and a fee paid by the client.

2. The provisions of subsection 1 do not authorize an agent to receive a commission or fee that is otherwise prohibited by a different agreement between the agent and insurer.

3. If an agent and a client enter into an agreement pursuant to subsection 1 that provides for the agent to receive a fee, the agreement must be expressed in the form of a written contract. The written contract must:

(a) Set forth the full amount of compensation that the agent will receive pursuant to the agreement;

(b) Be signed by the agent and the client before the completion of any transaction that will, pursuant to the agreement, entitle the agent to receive compensation; and

(c) Be retained by the agent for not less than 5 years.

Sec. 3. Effective Date: Pursuant to NRS 233B.063(3), as a temporary regulation, this regulation becomes effective as of the date filed with the Secretary of State and remains in effect until November 1, 2011, unless otherwise replaced or repealed prior to that date.