

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R074-14

June 20, 2014

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

AUTHORITY: §1, NRS 679B.130, 687B.120 and 689A.710; §2, NRS 679B.130, 687B.120 and 689C.203; §3, NRS 679B.130 and 687B.120.

A REGULATION relating to health insurance; prohibiting certain health insurers that provide coverage for prescription drugs and use a drug formulary from making certain changes to the formulary after its approval by the Commissioner of Insurance; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that any health insurance policy or contract, health care plan or certificate of coverage delivered or issued for delivery in this State must be filed with and approved as to form by the Commissioner of Insurance. (NRS 687B.120) For various forms of health insurance that provide coverage for prescription drugs, existing law requires that the insured or enrollee be notified by the insurer about whether the coverage is subject to a “formulary,” or a list of covered drugs. If a formulary is used, the required notice must include specified information about the formulary and additional information must be made available to insureds, enrollees and providers of health care. (NRS 689A.405, 689B.0283, 689C.281, 689C.455, 695A.255, 695B.176, 695C.1703, 695F.153, 695G.163)

After a formulary is approved by the Commissioner, this regulation generally prohibits certain insurers from: (1) removing a drug from the formulary; or (2) reclassifying the drug in the formulary to make a different deductible, copayment or coinsurance amount applicable to the drug. Removal of a drug from the formulary is authorized if the drug is not approved by the United States Food and Drug Administration or that agency issues any statement about the drug that calls into question its clinical safety.

Section 1 of this regulation makes these provisions applicable to individual health insurance policies. **Sections 2 and 3** of this regulation, respectively, adopt the provisions for certain policies for small employers and for coverage provided by health maintenance organizations. Other forms of health insurance are unaffected by this regulation.

Section 1. Chapter 689A of NAC is hereby amended by adding thereto a new section to read as follows:

1. An insurer that offers or issues a policy of health insurance which provides coverage for prescription drugs and uses a formulary approved by the Commissioner shall not:

(a) Except as otherwise provided in subsection 2, remove a prescription drug from the formulary; or

(b) If the formulary includes two or more tiers of benefits providing for different deductibles, copayments or coinsurance applicable to the prescription drugs in each tier, move a drug from one tier to another,

↳ after the formulary is approved by the Commissioner.

2. An insurer described in subsection 1 may remove a prescription drug from a formulary at any time if:

(a) The drug is not approved by the United States Food and Drug Administration; or

(b) The United States Food and Drug Administration issues a notice, guidance, warning, announcement or any other statement about the drug which calls into question the clinical safety of the drug. Before the drug may be removed from the formulary pursuant to this paragraph, the insurer must submit to the Commissioner a plan to mitigate the effect on consumers of removing the drug from the formulary, but the plan need not be approved by the Commissioner before the drug is removed from the formulary.

3. This section does not prohibit an insurer from changing a formulary if the change is effective only for a policy of health insurance to be offered or issued by the insurer for a subsequent benefit year.

Sec. 2. Chapter 689C of NAC is hereby amended by adding thereto a new section to read as follows:

1. A carrier that offers or issues a health benefit plan which provides coverage for prescription drugs and uses a formulary approved by the Commissioner shall not:

(a) Except as otherwise provided in subsection 2, remove a prescription drug from the formulary; or

(b) If the formulary includes two or more tiers of benefits providing for different deductibles, copayments or coinsurance applicable to the prescription drugs in each tier, move a drug from one tier to another,

↳ after the formulary is approved by the Commissioner.

2. A carrier described in subsection 1 may remove a prescription drug from a formulary at any time if:

(a) The drug is not approved by the United States Food and Drug Administration; or

(b) The United States Food and Drug Administration issues a notice, guidance, warning, announcement or any other statement about the drug which calls into question the clinical safety of the drug. Before the drug may be removed from the formulary pursuant to this paragraph, the carrier must submit to the Commissioner a plan to mitigate the effect on consumers of removing the drug from the formulary, but the plan need not be approved by the Commissioner before the drug is removed from the formulary.

3. This section does not prohibit a carrier from changing a formulary if the change is effective only for a health benefit plan to be offered or issued by the carrier for a subsequent benefit year.

Sec. 3. Chapter 695C of NAC is hereby amended by adding thereto a new section to read as follows:

1. A health maintenance organization or insurer that offers or issues evidence of coverage which provides coverage for prescription drugs and uses a formulary approved by the Commissioner shall not:

(a) Except as otherwise provided in subsection 2, remove a prescription drug from the formulary; or

(b) If the formulary includes two or more tiers of benefits providing for different deductibles, copayments or coinsurance applicable to the prescription drugs in each tier, move a drug from one tier to another,

↪ after the formulary is approved by the Commissioner.

2. A health maintenance organization or insurer described in subsection 1 may remove a prescription drug from a formulary at any time if:

(a) The drug is not approved by the United States Food and Drug Administration; or

(b) The United States Food and Drug Administration issues a notice, guidance, warning, announcement or any other statement about the drug which calls into question the clinical safety of the drug. Before the drug may be removed from the formulary pursuant to this paragraph, the health maintenance organization or insurer, as applicable, must submit to the Commissioner a plan to mitigate the effect on consumers of removing the drug from the formulary, but the plan need not be approved by the Commissioner before the drug is removed from the formulary.

3. This section does not prohibit a health maintenance organization or insurer from changing a formulary if the change is effective only for evidence of coverage to be offered or

issued by the health maintenance organization or insurer, as applicable, for a subsequent benefit year.