

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
JASON FRIERSON, *Assemblyman, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
JOYCE WOODHOUSE, *Senator, Chair*
Mark Krmpotic, *Fiscal Analyst*
Cindy Jones, *Fiscal Analyst*

RICK COMBS, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
ROCKY COOPER, *Legislative Auditor* (775) 684-6815
MICHAEL J. STEWART, *Research Director* (775) 684-6825

March 16, 2018

Ms. Sue Bell
Legal Secretary
Commissioner of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706



Re: LCB File No. R002-18

Dear Ms. Bell:

A regulation adopted by the Commissioner of Insurance has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675, as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

A handwritten signature in blue ink, appearing to read "Allan L. Amburn".

Allan L. Amburn
Deputy Legislative Counsel

William L. Keane
Senior Principal Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

WLK/slj
Enclosure

SECRETARY OF STATE
FILING DATA

FILED.NV.SOS
2018 MAY 16 PM12:01

By

**Form For Filing
Administrative Regulations**

Agency

Dept. of Business and Industry

Division of Insurance

R002-18

**FOR EMERGENCY
REGULATIONS ONLY**

Effective date _____

Expiration date _____

Governor's signature

Classification: PROPOSED ADOPTED BY AGENCY EMERGENCY

Brief description of action Regulation concerning Network Adequacy Plan Year 2019

Authority citation other than 233B NRS 679B.130 and 687B.490

Notice date 2/9/18

Date of Adoption by Agency 3/19/18

Hearing date 3/14/18

**ADOPTED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R002-18

Effective January 1, 2019

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

AUTHORITY: §§1 and 2, NRS 679B.130 and 687B.490, as amended by section 88 of Assembly Bill No. 83, chapter 376, Statutes of Nevada 2017, at page 2355.

A REGULATION relating to insurance; requiring a network plan to satisfy certain requirements before the Commissioner of Insurance can determine that such a network plan is adequate for sale in this State; 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 and as required to ensure compliance with federal law relating to insurance. (NRS 679B.130) Existing law also requires: (1) a carrier that offers coverage in the small employer group or individual market to demonstrate the capacity to deliver services adequately before making any network plan available for sale in this State; and (2) the Commissioner to promulgate regulations concerning the organizational arrangements of the network plan and the procedure established for the network plan to develop, compile, evaluate and report statistics relating to its operations and services. (NRS 687B.490, as amended by section 88 of Assembly Bill No. 83, chapter 376, Statutes of Nevada 2017, at page 2355)

In 2017, the Commissioner required a network plan to contain: (1) the most recent version of the standards prescribed by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; and (2) evidence that the network plan provides reasonable access to at least one provider who practices in the specialty area of pediatrics by complying with the area designations for the maximum time and distance standards. (NAC 687B.768, as amended by section 1 of LCB File No. R025-17)

In order for the Commissioner to determine that a network plan made available for sale in this State is adequate, **section 1** of this regulation requires a network plan to contain evidence that the network plan: (1) provides reasonable access to at least one provider who practices in certain specialty areas by complying with the area designations for the maximum time and distance standards; and (2) contracts with at least 30 percent of certain essential community

providers and offers contracts in good faith to available Indian health care providers and to certain categories of essential community providers. Section 1 also defines “essential community providers” by reference to mean a provider that serves predominantly low-income and medically underserved individuals.

Section 1. NAC 687B.768, as amended by section 1 of LCB File No. R025-17, is hereby amended to read as follows:

687B.768 1. 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) The standards contained in the most recent Letter to Issuers in the Federally-facilitated Marketplaces issued by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services. A copy of the letter may be obtained free of charge at the Internet address <https://www.cms.gov/CCIIO/resources/regulations-and-guidance/>.

(b) 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 and distance standards in the following table:

Specialty Area	Maximum Time and Distance Standards (Minutes/Miles)			
	Metro	Micro	Rural	Counties with Extreme Access Considerations (CEAC)
<i>Primary Care</i>	<i>15/10</i>	<i>30/20</i>	<i>40/30</i>	<i>70/60</i>
<i>Endocrinology</i>	<i>60/40</i>	<i>100/75</i>	<i>110/90</i>	<i>145/130</i>
<i>Infectious Diseases</i>	<i>60/40</i>	<i>100/75</i>	<i>110/90</i>	<i>145/130</i>

<i>Oncology - Medical/Surgery</i>	<i>45/30</i>	<i>60/45</i>	<i>75/60</i>	<i>110/100</i>
<i>Oncology - Radiation/Radiology</i>	<i>60/40</i>	<i>100/75</i>	<i>110/90</i>	<i>145/130</i>
<i>Mental Health (Including Substance Use Disorder Treatment)</i>	<i>45/30</i>	<i>60/45</i>	<i>75/60</i>	<i>110/100</i>
<i>Pediatrics</i>	<i>25/15</i>	<i>30/20</i>	<i>40/30</i>	<i>105/90</i>
<i>Rheumatology</i>	<i>60/40</i>	<i>100/75</i>	<i>110/90</i>	<i>145/130</i>
<i>Hospitals</i>	<i>45/30</i>	<i>80/60</i>	<i>75/60</i>	<i>110/100</i>
<i>Outpatient Dialysis</i>	<i>45/30</i>	<i>80/60</i>	<i>90/75</i>	<i>125/110</i>

(c) Evidence that the network plan:

(1) Contracts with at least 30 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, as calculated using the methodology contained in the most recent Letter to Issuers in the Federally-facilitated Marketplaces.

(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, 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>.

(3) Offers contracts in good faith to at least one essential community provider in each category of essential community provider, as contained in the most recent Letter to Issuers in the Federally-facilitated Marketplaces, 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.

2. If the area designations for the maximum time and distance standards required pursuant to paragraph (b) of subsection 1 are changed by the most recent Letter to Issuers in the Federally-facilitated Marketplaces, the Commissioner will post on the Internet website maintained by the Division notice of such changes.

3. *To offer a contract in good faith pursuant to paragraph (c) 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 Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services requests to verify compliance with this policy.*

4. Upon the issuance of a new Letter to Issuers in the Federally-facilitated Marketplaces, the Commissioner will determine whether the requirements of ~~{sections 2 to 18,}~~ *NAC 687B.750 to 687B.784*, inclusive, ~~{of this regulation,}~~ including, without limitation, the standards required pursuant to subsection 1, conform with any similar standards prescribed in the new Letter to Issuers in the Federally-facilitated Marketplaces. If the Commissioner determines that the requirements of ~~{sections 2 to 18,}~~ *NAC 687B.750 to 687B.784*, inclusive, ~~{of this regulation}~~ do not conform with any similar standards prescribed in the new Letter to Issuers in the Federally-facilitated Marketplaces, the Commissioner will hold a public hearing concerning possible amendments to ~~{sections 2 to 18,}~~ *NAC 687B.750 to 687B.784*, inclusive, ~~{of this regulation}~~ and give notice of that hearing in accordance with NRS 233B.060.

~~{4.}~~ 5. As used in this section ~~{, “maximum”}~~ :

(a) *“Essential community provider”* has the meaning ascribed to it in the most recent Letter to Issuers in the Federally-facilitated Marketplaces.

(b) *“Maximum* time and distance standards” has the meaning ascribed to it in the most recent Letter to Issuers in the Federally-facilitated Marketplaces.

Sec. 2. This regulation becomes effective on January 1, 2019.

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

LCB FILE NO. R002-18

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 687B.

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

The regulation is necessary to comply with the requirement that the Commissioner issue the network adequacy standards required of all network plans. See NRS 687B.490 and NAC 687B.768. The purpose of the regulation is to establish adequacy standards for network plans for plan year 2019.

2. A description of how public comment was solicited, a summary of the 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 e-mailing 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/>, mailed to the main library for each county in Nevada, and posted at the following locations:

*Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, Nevada 89706*

*Nevada Division of Insurance
3300 West Sahara Avenue, Suite 275
Las Vegas, Nevada 89102*

*Legislative Building
401 South Carson Street
Carson City, Nevada 89701*

*Nevada State Business Center
3300 West Sahara Avenue
Las Vegas, Nevada 89102*

*Blasdel Building
209 East Musser Street
Carson City, Nevada 89701*

*Grant Sawyer Building
555 East Washington Avenue
Las Vegas, Nevada 89101*

*Capitol Building
101 North Carson Street
Carson City, Nevada 89701*

*Nevada Department of Employment,
Training and Rehabilitation
2800 E. Saint Louis Avenue
Las Vegas, Nevada 89104*

Public comment was also solicited at the workshop held on February 28, 2018, and at the hearing held on March 14, 2018. The workshop and hearing took place at the offices of the Division, 1818 East College Parkway, Carson City, Nevada 89706, with simultaneous videoconferencing to the Nevada State Business Center, 3300 West Sahara Avenue, Las Vegas, Nevada 89102.

(b) A summary of the public response:

The Division of Insurance received no written comments or testimony related to this regulation.

(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 R002-18. A copy of said summary may be obtained by contacting Jeremy Gladstone, at (775) 687-0729 or jgladstone@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@doi.nv.gov.

3. The number of persons who:

- (a) Attended the hearing: *Three members of the public; two Division employees.*
- (b) Testified at the hearing: *One Division employee.*
- (c) Submitted to the agency written statements: *None.*

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
<i>Jeremy Gladstone</i>	<i>Division of Insurance</i>	<i>1818 College Pkwy Carson City, NV 89706</i>	<i>(775)687-0729</i>	<i>jgladstone@doi.nv.gov</i>

Submitted to the agency written statements:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
<i>NO WRITTEN STATEMENTS WERE RECEIVED</i>				

5. A description of how comment was solicited from affected businesses, a summary of the responses, and an explanation how interested persons may obtain a copy of the summary.

The Division of Insurance drafted a survey using Survey Monkey, requesting that respondents self-identify as a small business and provide feedback concerning the effects of the proposed regulation on business. The survey consisted of the following questions:

1. *“Do you own or manage a small business (1-50 employees)?”*
2. *“About how many employees work at your company?”*
3. *“Does your small business offer a health insurance plan with an in-network benefit to your employees?”*
 - a. *“What percentage of your employees enroll in this benefit?”*
4. *“Does your small business plan to offer a health insurance plan with an in-network benefit to your employees for plan year 2019?”*
 - a. *“What percentage of your employees do you expect to enroll in this benefit for plan year 2019?”*

The survey was sent out to the Chambers of Commerce throughout the state of Nevada for distribution to their members. To date, the Division has received only two responses to the survey from the Chambers. The survey responses received do not suggest that quantifying network adequacy standards in a regulation will impact small businesses.

Further, during the two-year process of promulgating the network adequacy regulation, which involved numerous parties, comments, and meetings, the Division received no comments which suggest that quantifying network adequacy standards in a regulation would negatively impact small businesses. The Division has also conducted extensive analysis and research of network adequacy standards to determine its reach.

This summary may be obtained by telephoning Jeremy Gladstone at (775) 687-0729, or by e-mail request to jgladstone@doi.nv.gov.

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

Not applicable, as there was no public comment received.

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

- (1) Both adverse and beneficial effects:

The adverse impact of the regulation on health insurance carriers is that they will be required to demonstrate the adequacy of their network plans based on the standards in the regulation. Carriers will likely have to adjust their network plans to meet these standards which could include adding additional healthcare

providers and facilities to their current network plan designs.

The benefit for health insurance carriers is that over time they will be able to better measure members' needs and use of providers to better plan their networks.

(2) Both immediate and long-term effects:

The immediate adverse impact is that the health insurance carriers will be required to demonstrate the adequacy of their network plans based on the network adequacy standards in the regulation. Carriers will likely have to adjust their network plans to meet member needs. Carriers may have to add additional healthcare providers to their current network plan designs.

Once carriers establish the relevant number and types of healthcare providers necessary to meet the network adequacy requirements, the long-term impact on carriers will be better known. Data will be gathered by the Division through its annual review of performance of a carrier's network plan. This data can then be studied to better predict long-term effects of certain network adequacy requirements.

The Division does not anticipate an immediate economic benefit to health insurance carriers from the regulation. Long term, health insurance carriers will be able to better measure members' needs and use of providers to better plan.

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

(1) Both adverse and beneficial effects:

The adverse economic effect on the public from the regulation is that there may be a learning curve with the health insurance carriers which may impact members' abilities to access care as quickly as hoped. Additionally, although the standards will be in place, this does not guarantee that every healthcare provider sought by a policyholder will always be an "in-network" provider.

The economic benefit for the public is that once implemented, members should be able to more reasonably access appropriate care with in-network providers. As the network adequacy requirements are updated each year, health insurance carriers should provide a broader base of "in-network" healthcare providers.

(2) Both immediate and long-term effects:

Looking at the immediate adverse impact, as carriers obtain experience

data, there may be a learning curve that may impact members' abilities to access care as quickly as hoped. In the long term, although network adequacy requirements will be issued each year, this does not guarantee that every healthcare provider sought by a policyholder will always be an "in-network" provider. As a result, the policyholder may still be responsible for paying some additional amounts out-of-pocket for an "out-of-network" provider.

Looking at the immediate benefit, once implemented, members should be able to more reasonably access appropriate care with in-network providers. In the long term, as the network adequacy requirements are updated and issued each year, they will generally provide a broader base of "in-network" healthcare providers and access thereto. By providing a broader base of "in-network" healthcare providers and access thereto, policyholders should experience lower out-of-pocket costs.

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

There is no additional cost to enforce this regulation.

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, as there is no overlap or duplication.

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, as there are not more stringent provisions.

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, as this regulation does not establish a new fee or increase an existing fee.