

## NOTICE OF INTENT TO ACT UPON REGULATION

### Notice of Hearing for the Adoption, Amendment or Repeal of Regulations of The Department of Business and Industry, Division of Insurance

The State of Nevada Department of Business and Industry, Division of Insurance (“Division”), (775) 687-0700, will hold a public hearing at **1:30 p.m. on October 20, 2015**, at the Division’s office located at 1818 East College Parkway, 1<sup>st</sup> floor hearing room, Carson City, Nevada 89706. Interested persons may also participate through a simultaneous videoconference conducted at the Bradley Building, 2501 East Sahara Avenue, 2<sup>nd</sup> floor conference room, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to **chapter 687B** of the Nevada Administrative Code (“NAC”).

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

#### **LCB File No. R049-14. Network Adequacy.**

A regulation relating to insurance; establishing certain requirements relating to the adequacy of a network plan issued by a carrier; authorizing the Commissioner of Insurance to determine whether a network plan is adequate under certain circumstances; requiring a carrier whose network plan is deemed or determined to be adequate to notify the Commissioner of any significant change to its network and take certain actions to correct any deficiency that results; providing for the availability of a network plan to persons outside of the approved service area in certain circumstances; and providing other matters properly relating thereto.

#### **Statement of Purpose for LCB File No. R049-14. Network Adequacy.**

(1) Why is the regulation necessary and what is its purpose? *The proposed regulation outlines the requirements for network plans to apply for and be approved by the Commissioner of Insurance (“Commissioner”). Existing federal<sup>1,2</sup> and state<sup>3</sup> law require health benefit plans utilizing a network plan to prove the adequacy of the number, type, and location of the providers and facilities included within the network.*

(2) What are the terms or substance of the proposed regulation? *The proposed regulation outlines a procedure for a carrier wishing to apply for a network plan to have the application deemed adequate. It also provides for the ability of the Commissioner to declare a network plan adequate in certain instances when the application fails to meet the safe harbor provisions. The proposed regulation also outlines the requirements for network plans to remain in compliance and the potential remedies and penalties for failing to remain compliant.*

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<sup>1</sup> 42 U.S.C. § 18031(c)(1)(B)

<sup>2</sup> 45 C.F.R. § 155.230

<sup>3</sup> NRS 687B.490

(3) What is the anticipated impact of the regulation on the problem(s)? *The proposed regulation is anticipated to mitigate some of the issues consumers, providers, facilities and insurers may experience in ensuring adequate access to medical care. Due to disparities in geography and medical care availability, the regulation is not anticipated to solve all issues consumers experience while trying to access medical care.*

(4) Do other regulations address the same problem(s)? *NAC 695C.1255 establishes similar requirements for Health Maintenance Organizations.*

(5) Are alternate forms of regulation sufficient to address the problem(s)? *No.*

(6) What value does the regulation have to the public? *The proposed regulation should help ensure that members of the public who purchase health benefit plans utilizing network plans have adequate access to medical care or other remedies available.*

(7) What is the anticipated economic benefit of the regulation?

- a. Public
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*
- b. Insurance Business
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*
- c. Small Businesses
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*
- d. Small Communities
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*
- e. Government Entities
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*

(8) What is the anticipated adverse impact, if any?

- a. Public
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*
- b. Insurance Business
  - 1. Immediate: *None anticipated*
  - 2. Long Term: *None anticipated*

- c. Small Businesses
    - 1. Immediate: *None anticipated*
    - 2. Long Term: *None anticipated*
  - d. Small Communities
    - 1. Immediate: *None anticipated*
    - 2. Long Term: *None anticipated*
  - e. Government Entities
    - 1. Immediate: *None anticipated*
    - 2. Long Term: *None anticipated*
- (9) What is the anticipated cost of the regulation, both direct and indirect?
- a. Enactment: *No cost anticipated.*
  - b. Enforcement: *No direct cost to the state anticipated. Statute permits the Division to pass the cost of enforcement to the insurers applying for the approval of a network plan.*
  - c. Compliance: *No direct cost to the state anticipated. Statute permits the Division to pass the cost of compliance in the form of a market conduct examination to the insurer under examination.*
- (10) Does the regulation establish a new fee or increase an existing fee? *No.*
- (11) Provide a statement which identifies the methods used by the agency in determining the impact of the proposed regulation on a small business, prepared pursuant to subsection 3 of NRS 233B.0608. *Attached.*
- (12) Provide a description of any regulations of other state or local governmental 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, state the name of the regulating federal agency. *None known.*
- (13) If the regulation is required pursuant to federal law, provide a citation and description of the federal law. *See above.*
- (14) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions. *Not applicable.*

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 East College Parkway, Suite 103, Carson City, Nevada 89706. **Written submissions must be received by the Division on or before October 13, 2015.** 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 regulation 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 regulation will be available at the offices of the Division,

1818 East 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 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://leg.state.nv.us/register/>. Copies of this notice and the proposed regulation will 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.

Notice of the hearing was provided via electronic means to all persons on the agency's e-mail list for administrative regulation noticing, and this Notice of Intent to Act Upon Regulation was posted to the agency's Internet Web site at <http://doi.nv.gov/> and was provided to or posted at the following locations:

Department of Business and Industry  
Division of Insurance  
1818 East College Parkway, Suite 103  
Carson City, Nevada 89706

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

Legislative Building  
401 South Carson Street  
Carson City, Nevada 89701

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

Blasdel Building  
209 East Musser Street  
Carson City, Nevada 89701

Capitol Building Main Floor  
101 North Carson Street  
Carson City, Nevada 89701

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

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

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

Churchill County Library  
553 South Main Street  
Fallon, Nevada 89406

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

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

Elko County Library  
720 Court Street  
Elko, Nevada 89801

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

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

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

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

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

Lyon County Library  
20 Nevin Way  
Yerington, Nevada 89447

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

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

Storey County Clerk  
P.O. Drawer D  
Virginia City, Nevada 89440

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

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

White Pine County Library  
950 Campton Street  
Ely, Nevada 89301

Members of the public who would like additional information about the proposed regulations may contact Glenn Shippey, Actuarial Analyst, at (775) 687-0738, or via e-mail to [gshippey@doi.nv.gov](mailto:gshippey@doi.nv.gov).

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 East College Parkway, Suite 103, Carson City, Nevada 89706, or by calling (775) 687-0700, no later than five (5) working days prior to the hearing.

DATED this 14<sup>th</sup> day of September, 2015.

  
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AMY L. PARKS  
Acting Commissioner of Insurance





DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

1818 East College Pkwy., Suite 103  
Carson City, Nevada 89706  
(775) 687-0700 • Fax (775) 687-0787  
Website: [doi.nv.gov](http://doi.nv.gov)  
E-mail: [insinfo@doi.nv.gov](mailto:insinfo@doi.nv.gov)

**Notice of Intent to Act Upon Regulation & Hearing Agenda**  
**LCB File No. R049-14, Network Adequacy**

**Agenda**

**Tuesday, October 20, 2015 • 1:30 P.M.**

**Location of Hearing:**

Offices of the Division of Insurance  
1818 E. College Pkwy., 1<sup>st</sup> Floor Hearing Room  
Carson City, NV 89706  
(Division Offices located in Suite 103)

**Available via Videoconference at:**

Offices of the Division of Insurance  
2501 E. Sahara Ave., 2<sup>nd</sup> Floor Conference Room  
Las Vegas, NV 89104  
(Division Offices located in Suite 302)

1. **Call to Order.**
2. **Public Comment.**
3. **Presentation, Discussion and Adoption of Proposed Regulation. (For Possible Action)**  
**LCB File No. R049-14, Network Adequacy.**

A regulation relating to insurance; establishing certain requirements relating to the adequacy of a network plan issued by a carrier; authorizing the Commissioner of Insurance to determine whether a network plan is adequate under certain circumstances; requiring a carrier whose network plan is deemed or determined to be adequate to notify the Commissioner of any significant change to its network and take certain actions to correct any deficiency that results; providing for the availability of a network plan to persons outside of the approved service area in certain circumstances; and providing other matters properly relating thereto.

4. **Public Comment.**
5. **Adjournment.**

Supporting public material for this meeting may be requested from Sue Dummar, Legal Secretary, Nevada Division of Insurance, 1818 E. College Parkway, Carson City, Nevada 89706, by e-mail to [sdummar@doi.nv.gov](mailto:sdummar@doi.nv.gov), or by calling (775) 687-0704. In your request, please state that you are requesting meeting materials for LCB File No. R049-14, Network Adequacy, and provide the date of the meeting.

Note: Any agenda item may be taken out-of-order; items may be combined for consideration by the public body; and items may be pulled or removed from the agenda at any time. The Hearing Officer, within his/her discretion, may allow for public comment on individual agenda items. Public Comment may be limited to three minutes per speaker.

Members of the public are encouraged to submit written comments for the record.

We are pleased to make reasonable accommodations for attendees with disabilities. Please notify Sheri LeTourneau, Assistant to the Commissioner, at (775) 687-0771, a day prior to the meeting.

**NOTICES FOR THIS MEETING HAVE BEEN POSTED IN ACCORDANCE WITH NRS 241 AT THE FOLLOWING LOCATIONS:**

Nevada Division of Insurance, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706

Nevada Division of Insurance, 2501 E. Sahara Avenue, Suite 302, Las Vegas, Nevada 89104

Nevada State Legislative Building, 401 S. Carson Street, Carson City, Nevada 89701

Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada 89101

Blasdel State Office Building, 209 E. Musser Street, Carson City, Nevada 89701

Nevada State Capitol, 101 N. Carson Street, Carson City, Nevada 89701

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

The State of Nevada Website ([www.nv.gov](http://www.nv.gov))

The Nevada State Legislature Website ([www.leg.state.nv.us](http://www.leg.state.nv.us))

The Nevada Division of Insurance Website ([www.doi.nv.gov](http://www.doi.nv.gov))



**STATE OF NEVADA  
DEPARTMENT OF BUSINESS & INDUSTRY  
DIVISION OF INSURANCE**

**Determination of Necessity of Small Business Impact Statement**

R049-14

A regulation pertaining to the adequacy of provider networks offered by certain health benefit plans.

Effective for plans issued or renewed on or after January 1, 2015

**1. BACKGROUND**

Prior to January 1, 2014 the Nevada State Board of Health was required to determine the adequacy of provider networks for health maintenance organizations (HMOs) in the state. HMOs traditionally offer a very limited benefit, or no benefit, when the insured uses a provider outside of the network of approved providers. Preferred provider organizations (PPOs) traditionally allow insureds to seek care from a provider outside of the network of preferred providers in exchange for a lower payment contribution by the insurer. As a result of this difference, PPOs have not previously had a standard for network adequacy.

The Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010, as amended, collectively known as the Affordable Care Act (ACA) mandates that all health insurance sold through an exchange, without regard to its status as an HMO or PPO or otherwise, be certified as a qualified health plan (QHP). Part of the QHP certification process entails a determination of network adequacy and the authority for such (per the ACA) is vested in the state exchange, here the Silver State Health Insurance Exchange (SSHIX), unless otherwise authorized in state law.

Given this potentially bifurcated system (HMO network adequacy by the Board of Health, all other by the SSHIX) and the already fragmented QHP certification process (with the Division of Insurance conducting rate and form review) it was decided that the Board of Health and SSHIX would abdicate their authority over network adequacy to the Division of Insurance (DOI). The DOI determined that conducting network adequacy market-wide, without regard to status as a QHP, would ensure a uniform system of insurance regulation and consumer protection. Assembly Bill 425, which accomplished the goal of transferring authority over provider networks to the DOI, was advanced, passed and signed during the 77<sup>th</sup> (2013) Legislative Session. This proposed regulation seeks to enact rules building upon the framework contained within that legislation.

- 2. 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)(circle one)**

NO

YES

- 3. HOW WAS THAT CONCLUSION REACHED? (NRS 233B.0608.3)**

Upon review of the topic and content of the proposed regulation, Division of Insurance staff determined that there was a high probability that the regulation would affect small business. The Division of Insurance sent a brief survey to businesses identified as being directly regulated by the proposed

regulation. At least one survey recipient responded affirmatively to being both a small business (as defined in NRS 233B.0382) and significantly burdened or restricted by the proposed regulation.

I, Scott J. Kipper, Commissioner of Insurance for the State of Nevada, 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 the statement above is accurate. (NRS 233B.0608.3)

02 June 2014  
(DATE)

  
SCOTT J. KIPPER  
Commissioner of Insurance

### Small Business Impact Statement

R049-14

#### 4. DESCRIPTION OF SOLICITATION

The DOI identified thirteen businesses as potentially being directly affected by the proposed regulation. A survey was drafted and sent to representatives of the companies via email on Thursday, April 24. The survey requested respondents self-identify as a statutory small business and provide feedback concerning the effects of the proposed regulation on business and the potential methods to alleviate the impact of the proposed regulation. Response was requested by the close of business on Friday, May 2.

#### 5. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES (NRS 233B.0609.1.a)

*Comment:* One commenter questioned whether the proposed regulation was applicable only to qualified health plans (QHPs). The commenter noted that the Division's issue brief dated Feb. 7, 2014 indicated that the Affordable Care Act (ACA) network reforms only apply to QHPs and guidance issued by the Centers for Medicare & Medicaid Services (CMS) on May 13, 2013 indicated that standards related to essential community providers only apply to QHP networks.

*Response:* Nevada Revised Statute (NRS) 687B.490 grants authority to the Division of Insurance to determine the adequacy of all network plans in Nevada without regard to their status as a QHP.

*Comment:* One commenter suggested that the proposed regulation be limited to apply only to QHPs.

*Response:* NRS 687B.490 applies to all network plans without regard to the status as a QHP. The Division believes that it is in the best interest of consumers to apply network adequacy standards to all network plans available in the state.

*Comment:* One commenter suggested that the proposed regulation be clarified to indicate that it does not apply to policies classified as "grandfathered" under the ACA.

*Response:* NRS 687B.490, requiring the Commissioner to determine the adequacy of network plans, is applicable to a network plan before it is "available for sale in this State." Grandfathered plans, by definition, are not available for sale and thus are not subject to the requirements of this proposed

regulation. The Division would note that grandfathered plans may be subject to other network adequacy requirements, e.g. NRS 695C or 695G, if the grandfathered plan was subject to those requirements prior to the efficacy of NRS 687B.490.

*Comment:* One commenter noted that, as used in sections 8 and 12 of the proposed regulation, the phrase “no greater cost to the covered person than if the service were obtained from network providers or facilities” may be ambiguous. The commenter was unsure if the phrase required out-of-network claims to be paid without regard to a contracted rate or a usual and customary allowance.

*Response:* The DOI agrees that the language in section 8, subsection 5 is ambiguous and requires amendment. The language in question would appear to permit a carrier using a network plan to bypass the requirement to have an initial adequate network by using referral or other methods to ensure care for covered services. This is not the intent of the DOI and section 8, subsection 5 will be amended to better reflect that intent.

The DOI believes that the language in question is appropriate for section 12, subsection 3, permitting a carrier using a network plan to supplement an inadequate network through referral or other methods while a corrective action plan is being implemented.

*Comment:* One commenter suggested that sections 8 and 12 of the proposed regulation be amended to indicate that insurance carriers be required to pay the same benefit rate, as opposed to dollar amount, if an adequate network isn't found to exist.

*Response:* The Division believes that subsection 5 of section 8 may inappropriately burden insurance carriers that have been determined to have an adequate network pursuant to section 8 and may propose it be removed.

Subsection 3 of section 12 was originally applicable to HMOs. The Division recognizes that its application to PPO and other products may not function as intended and will explore other options to accomplish the goal of ensuring care to consumers when a network becomes inadequate.

*Comment:* One commenter suggested that sections 8 and 12 of the proposed regulation be amended to require an increased payment only if the claim in question is a non-elective emergent service.

*Response:* The Division believes that subsection 5 of section 8 may inappropriately burden insurance carriers that have been determined to have an adequate network pursuant to section 8 and may propose it be removed.

Subsection 3 of section 12 is intended to ensure that consumers are held harmless when a network plan becomes inadequate during a policy year. The Division recognizes that concern exists relating to elective or non-emergent care but believes that consumers should not be prevented from seeking care or be forced to pay considerably more for care when an insurance carrier and providers cannot

come to an equitable arrangement regarding contracting. However, the Division is willing to explore other methods which may be used to accomplish this goal.

*Comment:* One commenter suggested that the Commissioner only declare a network to be inadequate in the most egregious situations.

*Response:* The Division believes that adherence to a defined standard is in the best interests of consumers. The standard should be set so that it provides concrete benefits to consumers without unduly burdening network plans. Setting a standard that is too low obviates the need for a network adequacy standard at all.

*Comment:* One commenter noted that they employ more than 150 employees and would not meet the appropriate statutory definition of a small employer.

*Response:* The Division appreciates all feedback from interested parties, even if it falls outside of the scope of this statutory small business impact analysis.

Other interested parties may receive a copy of this summary by contacting the Insurance Regulation Liaison of the Nevada Division of Insurance, Adam Plain, at (775) 687-0783 or [aplain@doi.nv.gov](mailto:aplain@doi.nv.gov).

6. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE (NRS 233B.0609.1.c)

The Division has insufficient data to determine the existence or estimate the magnitude of any estimated economic effects on small businesses the proposed regulation regulates.

7. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES (NRS 233B.0609.1.d)

The Division is exploring options to amend the proposed regulation to reduce the actual and perceived burden on small businesses.

8. ESTIMATED COST OF ENFORCEMENT (NRS 233B.0609.1.e)

The Division anticipates no direct cost to enforce the proposed regulation. NRS 687B.490(6) requires that any expense borne by the Division in determining the adequacy of a network plan be assessed against the insurance carrier applying for the network plan approval.

9. FEE CHANGES (NRS 233B.0609.1.f)

The proposed regulation does not create new fees. NRS 687B.490(6) requires that any expense borne by the Division in determining the adequacy of a network plan be assessed against the insurance carrier applying for the network plan approval. The Division is considering amending the proposed regulation to indicate how costs may be allocated across insurance carriers, if at all, when multiple Insurers submit network plans with similar or identical components.

10. DUPLICATIVE PROVISIONS (NRS 233B.0609.1.g)

The proposed regulation is similar in scope to the network adequacy requirements of NRS 695C.080. The division believes that three primary differences exist between the proposed regulation and NRS 695B.080:

1. The proposed regulation is not applicable to grandfathered plans;
2. The proposed regulation is applicable to all network plans and not limited to HMOs; and

3. NRS 695C.080 is applicable to HMOs applying for a certificate of authority whereas the proposed regulation applies to all plans issued by a licensed HMO, specifically plans that may be utilizing a network different than that submitted with the application for the certificate of authority.

11. HOW WAS THE ANALYSIS CONDUCTED? (NRS 233B.0609.1.b)


Division personnel deemed subject matter experts reviewed the responses to the small business impact survey in conjunction with the proposed regulation and guidance from the Centers for Medicare & Medicaid services.

12. REASONS FOR CONCLUSIONS (NRS 233B.0609.1.h)

The analysis of relevant inputs indicated that the proposed regulation was insufficient in many regards. There was concern regarding vague language and general applicability as well as areas omitted due to oversight. The Division has determined that a comprehensive amendment of the proposed regulation is necessary with one goal being the reduction of the impact upon small businesses.

I, Scott J. Kipper, Commissioner of Insurance for the State of Nevada, certify that, to the best of my knowledge or belief, the information contained in the statement above was prepared properly and is accurate. (NRS 233B.0609.2)

02 June 2014  
(DATE)

  
SCOTT J. KIPPER  
Commissioner of Insurance



**PROPOSED REGULATION OF THE  
COMMISSIONER OF INSURANCE**

**LCB File No. R049-14**

SECOND AMENDED DRAFT PROPOSED INCLUDING AMENDMENTS

July 23, 2015

EXPLANATION – Matter in *blue bold italics* is existing language in the Second Amended Draft; Matter in *green bold italics* is new language proposed in this amendment; and Matter in ~~*red bold-italic-strikethrough*~~ is deleted language in this amendment.

AUTHORITY: §§1-13, NRS 679B.130 and 687B.490.

A REGULATION relating to insurance; establishing certain requirements relating to the adequacy of a network plan issued by a carrier; authorizing the Commissioner of Insurance to determine whether a network plan is adequate under certain circumstances; requiring a carrier whose network plan is deemed or determined to be adequate to notify the Commissioner of any material change to its network and take certain actions to correct any deficiency that results; providing for the availability of a network plan to covered persons outside of the approved service area in certain circumstances; and providing other matters properly relating thereto.

**Section 1.** Chapter 687B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

**Sec. 2. (Definitions)**

*1. A “Carrier” means an insurer that makes any network plan available for sale in this State in the small employer group or individual market as contemplated by NRS 687B.490.*

*2. “CCHIO” means the Center for Consumer Information and Insurance Oversight within the Centers for Medicare and Medicaid Services division within the United States Department of Health and Human Services or its successor.*

3. *The “Centers for Medicare and Medicaid Services” means the Medicare Centers and Medicaid Services Centers within the Centers for Medicare and Medicaid Services division within the United States Department of Health and Human Services.*
4. *“Covered Persons” has the meaning ascribed to it in NRS 695G.017.*
5. *An “essential community provider” has the meaning ascribed to it in 45 C.F.R. § 156.235(c).*
6. *“Established Patterns of Care” means clinically appropriate referral patterns with expected patient travel to a location for treatment for a particular condition.*
7. *“Exchange” means the Silver State Health Insurance Exchange as defined by NRS 695I.030.*
8. *A “geographic service area” has the meaning ascribed to it:*
  - (a) For health benefit plans sold to individuals, in NRS 689A.527; or*
  - (b) For health benefit plans sold to small employers, in NRS 689C.072.*
9. *“Health Care Providers” has the meaning ascribed to it in NRS 695G.070.*
10. *“Indian Health Services” means the Indian Health Services division within the United States Department of Health and Human Services which is responsible for providing federal health services to American Indians and Alaska Natives.*
11. *A “material change” in a network plan is any change, or combination of changes taking effect within 30 days of each other, that:*
  - (a) For specialties or categories of health care with more than 10 providers, affects network plan capacity by more than 10 percent in any single specialty or category of health care for which a benefit is offered;*



*(b) For specialties or categories of health care with 10 or fewer providers, affects network plan capacity by more than 20 percent in any single specialty or category of health care for which a benefit is offered: or*

*(c). Does not meet the standards as provided for in section 4 of this regulation.*

*12. “Medically Necessary Emergency Services” has the meaning ascribed to it in NRS 695G.170.*

*13. “Network Plan” has the meaning ascribed to it in NRS 689B.570.*

*14. “Telehealth” has the meaning ascribed to it in section 3(3)(c) of AB292 from the 78<sup>th</sup> (2015) Session.*

*15. “Unreasonable travel” means a travel distance or time that does not meet the standards as provided for in section 4 of this regulation.*

*Sec. 3. A carrier must establish and maintain a network plan that has an adequate number and geographic distribution of contracted providers in each geographic service area covered by the network plan in order to meet anticipated health care needs based upon the benefits offered under the plan.*

*Sec. 4. 1. On or before the first Tuesday in January of each year, but no earlier than December 1 of the preceding year, the Commissioner will make available a preliminary list of the minimum number of health care providers and reasonable maximum travel distance or time, by county, for certain specialties and categories of health care. Interested parties may submit comments concerning the preliminary list to the Commissioner no later than January 20 of the applicable year.*

*2. On or before January 31 ~~[30]~~, but no earlier than January 21, of each year, the Commissioner will make available a final list of the minimum number of health care providers*

*and reasonable maximum travel distance or time, by county, for certain specialties and categories of health care. The final list will be applicable to health benefit plans issued or renewed on or after January 1 of the calendar year after the list is issued.*

*3. Unless otherwise approved in writing by the Commissioner, the specialties and categories of health care providers referenced in subsections 1 and 2 of this section shall be those specialties and categories of health care that:*

*(a) Appear as options on the Network Adequacy Template issued and periodically updated by the Centers for Medicare and Medicaid Services; and*

*(b) Are offered as a certification by:*

*(1) Member Boards within the American Board of Medical Specialties;*

*or*

*(2) The American Osteopathic Association.*

*4. A change to either list of specialties and categories of health care in subsection 3 of this section made after the Commissioner issues the final list of the minimum number of health care providers and maximum travel distance or time pursuant to subsection 2 of this section shall not be reflected until the next following calendar year's list of minimum number of health care providers and maximum travel distance or time is issued.*

**Sec. 5.** *A carrier shall, in conjunction with the annual rate and form filing, collect, compile, evaluate, report and submit sufficient data, in a format as determined by the Commissioner, to the Commissioner to establish that the proposed network plan has the capacity to adequately serve the anticipated number of covered persons in the network plan.*

**Sec. 6. 1.** *A carrier must establish that the carrier has a sufficient number and geographic distribution of essential community providers, where available, within the network*

*plan to ensure reasonable and timely access to a broad range of such essential community providers for low-income, medically underserved members in each geographic service area covered by the network plan.*

*2. For the purposes of subsection 1, a network plan that includes:*

*(a) At least 30 percent of the available essential community providers in each geographic service area covered by the network plan; and*

*(b) At least one essential community provider from each category in the following list:*

*(1) 42 U.S.C. § 256b(a)(4)(A);*

*(2) 42 U.S.C. § 256b(a)(4)(C);*

*(3) 42 U.S.C. § 256b(a)(4)(D);*

*(4) 42 U.S.C. § 256b(a)(4)(I); and*

*(5) 42 U.S.C. § 256b(a)(4)(L), 42 U.S.C. § 256b(a)(4)(M), 42 U.S.C. § 256b(a)(4)(N), or 42 U.S.C. § 256b(a)(4)(O).*

*shall be deemed sufficient.*

*3. For the purposes of meeting the 30 percent inclusion requirement in subsection 2, a carrier may use an essential community provider that does not meet the requirements to be included in any of the categories contained in paragraph (b) of subsection 2 so long as the carrier follows the ~~write-in~~ procedure for essential community providers outlined in the most current “Letter to Issuers in the Federally-facilitated Marketplaces”, as issued and updated periodically by CCHIO .*

4. For the purposes of satisfying paragraph (b)(4) ~~[(4)(b)]~~ of subsection 2 of this section, a carrier may utilize a letter of agreement with the applicable essential community provider.

Sec. 7. 1. A carrier who offers a network plan on the Exchange must use its best efforts to establish and maintain arrangements to ensure that American Indians and Alaskan Natives who are members within the network plan have access to health care services and facilities that are part of the Indian Health Service at no greater cost to the member than if the services were obtained from a health care provider that is part of the network plan.

2. Nothing in this section prohibits a carrier ~~[health benefit plan]~~ from limiting coverage for the health care services provided in paragraph (1) ~~[those health care services]~~ that meet the carrier's ~~[its]~~ standards for medical necessity, care management and claim administration or from limiting payment to that amount payable if the health care services were obtained from a health care provider that is part of the network plan.

3. Carriers are not responsible for credentialing health care providers that:

(a) Are part of the Indian Health Service; and

(b) Do not have a contract with the carrier to provide services as part of the carrier's network plan.

Sec. 8. 1. In determining whether a network plan is adequate, the Commissioner may, but is not limited to, consider:

(a) The relative availability of health care providers in the geographic service area covered by the network plan, including, without limitation, the:

(1). Operating hours, or their equivalent, of available health care providers; and/or

(2). *Established patterns of care;*

(b) *The ability of a carrier to enter into a contract with health care providers within the travel standards provided pursuant to section 4 of this regulation;*

(c) *The system for the delivery of care to be furnished by the health care providers contracted by a carrier in the network plan;*

(d) *The availability ~~[use]~~ of ~~[telemedicine or]~~ telehealth services ~~[to supplement or provide an alternative to in person care in the network plan];~~*

(e) *The availability of health care providers located outside of the network plan's geographic service area but within the travel standards provided pursuant to section 4 of this regulation; and*

(f). *The availability of nonemergency services accessible during normal business hours and medically necessary emergency services accessible at any time.*

**Sec. 9.** *A carrier shall monitor, on an ongoing basis, the ability and clinical capacity of its network plans' health care providers to furnish health care services to covered persons.*

**Sec. 10. 1.** *A carrier shall update its health care provider directory at least once a month. Updates ~~[Any updates]~~ to a health care provider directory shall indicate those health care providers which have left the network plan or are no longer ~~[have joined the network plan since the directory was last updated and those health care providers that are not]~~ accepting new patients. A carrier is not responsible for failing to update its health care provider directory each month with information that providers are contractually obligated to provide but fail to provide to the carrier.*

**2.** *A carrier with a material change to its network plan shall:*

*(a) Update its health care provider directory within 3 business days ~~[72 hours]~~ of the effective date of the material change in network plan. Any updates to a health care provider directory resulting from a material change to a network plan shall clearly indicate those health care providers:*

- (1) ~~[That have joined the network plan since the health care directory was last updated;~~(2) That have left the network plan since the health care directory was last updated; and*
- (2) ~~[(3)] That are not accepting new patients.~~*

*(b) Notify affected covered persons that a material change in network plan has occurred. The notice shall inform covered persons of how they may receive more information regarding the material change in network plan. The notice may be sent via electronic mail in instances where the carrier has received affirmative permission from the covered person to communicate in that manner.*

*3. The health care provider directory and each update thereto must:*

- (a) Be posted to the Internet website maintained by the carrier within 3 business days ~~[72 hours]~~ after the update is made. The posting shall be made to a page that is accessible without a username and password or otherwise permits ~~[covered]~~ persons who are not enrolled in any plan offered by the carrier to view the health care provider directory; and*
- (b) Be made available in a printed format upon request.*

**Sec. 11.** *1. A carrier shall notify the Commissioner, within 3 business days ~~[72 hours]~~ of the effective date of a material change in its network plan, of:*

- (a) The effective date of the material change in its network plan; and*
- (b) A description of the cause and impact of the material change in its network plan.*

**Sec. 12. 1.** *If a material change in a carrier's network plan results in a deficiency in its network plan, the carrier shall submit within 60 days after the effective date of the material change in its network plan, a corrective action plan to resolve the deficiency ~~[within 60 days after the effective date of the material change in its network plan].~~*

*2. During the period the corrective action plan submitted pursuant to subsection 1 is being implemented, a carrier shall at no greater cost to the covered person:*

*(a) Ensure that a covered person affected by the material change may obtain the covered service from a health care provider:*

*(1) Within the network plan ~~[, at no greater cost to the covered person];~~ or*

*(2) Not within the network plan, by entering into an agreement with the non-participating health care provider pursuant to NRS 695G.164; or*

*(b) Make other arrangements approved by the Commissioner to ensure that a covered person affected by the material change may obtain service.*

*3. The provisions of subsection 2 are not applicable if the covered person receives care from a non-participating health care provider without receiving prior authorization from the carrier unless the covered person receives medically necessary emergency services.*

**Sec. 13. 1.** *If the network plan is deficient at the end of the time period for the corrective action plan as provided for in section 11 the Commissioner may:*

*(a) For a network plan containing a health benefit plan made available for purchase on the Exchange, declare the network plan inadequate pursuant to*

*NRS 687B.490, and the health benefit plan will be declared deficient pursuant to 42 U.S.C. § 18031(c)(1) and subject to decertification pursuant to 45 C.F.R. § 156.290; or*

*(b) For any other network plan, declare the network plan inadequate pursuant to NRS 687B.490, and the carrier shall submit a statement of network capacity to the Commissioner pursuant to 42 U.S.C. § 300gg-1(c).*

**Sec. 14.** *1. The provisions of sections 6, 7, 8, 12 and 13 of this regulation do not apply to a network plan issued by a carrier that:*

*(a) Is licensed pursuant to chapter 680A of NRS;*

*(b) Had a statewide enrollment of 1,000 covered persons or fewer in the prior calendar year; and*

*(c) Has an anticipated statewide enrollment of 1,250 covered persons or fewer in the next upcoming calendar year.*

*2. A network plan meeting the requirements of subsection 1 shall be determined to meet the provisions of NRS 687B.490.*

**Sec. 15.** *The provisions of this regulation do not apply to:*

*1. A plan issued pursuant to NRS 422.273 for the purpose of Medicaid managed care program services on behalf of the Department of Health and Human Services;*

*2. A network plan issued for a health benefit plan regulated under chapter 689B of NRS and that is not available for sale to small employers as defined by NRS 689C.095; or*

*3. A grandfathered plan as defined in NRS 679A.094*

*4. A plan issued pursuant to (Medicare and Medicare Advantage).*



*Sec. 16. The following sections of chapter 695C of the Nevada Administrative Code are hereby repealed:*

*1. 695C.160; and*

*2. 695C.200.*