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August 30, 2018

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



Re: LCB File No. R001-18

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

ALA/slj
Enclosure

SECRETARY OF STATE
FILING DATA

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**Form For Filing
Administrative Regulations**

Agency

Dept. of Business and Industry

Division of Insurance

R001-18

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: PROPOSED ADOPTED BY AGENCY EMERGENCY

Brief description of action Regulation concerning Producer Fees

Authority citation other than 233B §§1 and 3, NRS 679B.130, 686A.015 and 686A.230; §§2 and 4, NRS 679B.130 and 686A.015.

Notice date 7/12/18

Date of Adoption by Agency 8/21/18

Hearing date 8/15/18

**APPROVED REGULATION OF
THE COMMISSIONER OF INSURANCE**

LCB File No. R001-18

Effective August 30, 2018

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

AUTHORITY: §§1 and 3, NRS 679B.130, 686A.015 and 686A.230; §§2 and 4, NRS 679B.130 and 686A.015.

A REGULATION relating to insurance; requiring certain information to be included in certain agreements for consultation or related advice; requiring a copy of certain agreements for consultation or related advice to be made available to the Division of Insurance of the Department of Business and Industry upon request; authorizing certain persons to charge and collect a fee for providing consultation or related advice concerning individual health benefit plans; requiring an agreement for consultation or related advice concerning individual health benefit plans to contain certain information; revising references to insurance agents and brokers; 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 any provision of the Nevada Insurance Code. (NRS 679B.130) Existing law further sets forth that the Commissioner has exclusive jurisdiction in regulating trade practices in the business of insurance in this State. (NRS 686A.015)

Existing law authorizes the Commissioner to adopt regulations to allow the charging and collecting of a fee by an insurance broker, consultant or financial planner for consultation or related advice on the purchase of individual or group life or health insurance or an individual or group annuity, whether or not such consultation or related advice results in the purchase of a policy of insurance or annuity. (NRS 686A.230) Existing regulations require an agreement for consultation or related advice which is entered into by a financial planner, life or health insurance agent or broker or insurance consultant to: (1) be in writing; and (2) contain certain information. (NAC 686A.330) **Section 3** of this regulation requires an agreement for consultation or related advice also to contain the name and address of the client or prospective client. Existing regulations additionally require each client or prospective client of a financial

planner, life or health insurance agent or broker or insurance consultant to be provided with a copy of the agreement. (NAC 686A.330) **Section 3** further requires a financial planner, producer of insurance or insurance consultant to retain a copy of the agreement and make such a copy available to the Division of Insurance of the Department of Business and Industry upon request.

Existing regulations authorize a financial planner, life or health insurance agent or broker or insurance consultant to charge a fee for providing consultation or related advice concerning: (1) group life or group annuity products; and (2) group health products. (NAC 686A.330) **Section 3** authorizes a financial planner, life or health insurance agent or broker or insurance consultant to charge a fee for providing consultation or related advice concerning certain individual health benefit plans. **Section 1** of this regulation requires an agreement for consultation or related advice concerning individual health benefit plans to contain certain information in addition to the information required by **section 3**. **Section 2** of this regulation makes conforming changes by defining the term “individual health benefit plan” and amending the definition for “health insurance” to include individual or group health insurance.

Existing law replaces various references to insurance agents and brokers with the term “producer of insurance.” (Sections 15, 21, 26, 27, 29-32, 164 and 165 of Assembly Bill No. 83, chapter 376, Statutes of Nevada 2017, at page 2323) **Sections 2 and 3** make conforming changes by replacing “agent or broker” with “producer of insurance.”

Section 4 of this regulation makes conforming changes.

Section 1. Chapter 686A of NAC is hereby amended by adding thereto a new section to read as follows:

If a financial planner, producer of insurance or insurance consultant charges a fee pursuant to paragraph (c) of subsection 3 of NAC 686A.330, the agreement for consultation or related advice must contain, in addition to the information required pursuant to subsection 1 of NAC 686A.330:

1. The license number assigned by the Division, or the identification number issued by the National Insurance Producer Registry, to the financial planner, producer of insurance or insurance consultant.

2. A statement of whether the fee charged pursuant to paragraph (c) of subsection 3 of NAC 686A.330 is refundable pro rata. If the fee is not refundable pro rata, a statement explaining that the fee is fully earned at the completion of the consultation or related advice and is not refundable.

3. The names of all health insurance carriers of which the financial planner, producer of insurance or insurance consultant is appointed to represent.

4. A statement of whether the financial planner, producer of insurance or insurance consultant is certified by the Silver State Health Insurance Exchange.

5. A statement of whether the financial planner, producer of insurance or insurance consultant currently maintains insurance covering liability for errors and omissions.

6. A disclosure notice which contains the following language:

The Affordable Care Act currently provides premium subsidies to those meeting the eligibility criteria. Premium subsidies are only available through policies offered on the Silver State Health Insurance Exchange.

If an individual health benefit plan is purchased through an insurance carrier of which the financial planner, life or health insurance agent or broker or insurance consultant is appointed to represent, the financial planner, life or health insurance agent or broker or insurance consultant may receive compensation or commission in addition to the fee that may be charged by a financial planner, life or health insurance agent or broker or insurance consultant. The amount of compensation or commission typically varies by insurance carrier.

7. *The telephone numbers of the Silver State Health Insurance Exchange, (855) 768-5465, and the Nevada Division of Insurance, (888) 872-3234.*

8. *The following statement that must be signed and dated by the client or prospective client prior to the consultation:*

CLIENT OR PROSPECTIVE CLIENT ATTESTATION

By signing below, I attest that I have reviewed the information provided in this disclosure and have received a copy of this form.

9. *The following statement that must be signed and dated by the financial planner, producer of insurance or insurance consultant prior to the consultation:*

FINANCIAL PLANNER, PRODUCER OF INSURANCE OR INSURANCE CONSULTANT ATTESTATION

By signing below, I attest that I have disclosed all relevant facts concerning the services to be provided and the fees, charges or other remuneration that will be charged or received for providing the consultation or related advice described.

Sec. 2. NAC 686A.320 is hereby amended to read as follows:

686A.320 As used in NAC 686A.320 to 686A.340, inclusive, ***and section 1 of this regulation,*** unless the context otherwise requires:

1. “Agent” has the meaning ascribed to it in NRS 683A.321.
2. “Financial planner” means ~~an agent or broker~~ ***a producer of insurance*** who has successfully completed a course of instruction required for designation as a financial planner by a recognized professional association of financial planners.
3. “Health insurance” includes any:

(a) Individual health insurance or group health insurance provided pursuant to chapter 689A or 689B of NRS;

(b) Contract for hospital, medical or dental services entered into pursuant to chapter 695B of NRS;

~~**(b)**~~ **(c) Health care plan provided pursuant to chapter 695C of NRS;**

~~**(e)**~~ **(d) Plan for dental care provided pursuant to chapter 695D of NRS; or**

~~**(d)**~~ **(e) Plan for prepaid limited health service provided pursuant to chapter 695F of NRS.**

4. "Individual health benefit plan" has the meaning ascribed to it in NRS 689A.555.

Sec. 3. NAC 686A.330 is hereby amended to read as follows:

686A.330 1. Any agreement for consultation or related advice which is entered into by a financial planner, ~~life or health insurance agent or broker,~~ **producer of insurance** or insurance consultant must be in writing and must contain:

(a) The name and address of the client or prospective client seeking the consultation or related advice;

(b) The name , ~~and~~ address , telephone number and electronic mail address of the financial planner, ~~life or health insurance agent or broker,~~ producer of insurance or insurance consultant;

~~**(b) The**~~ **(c) If applicable, the name and address of any person or entity licensed pursuant to title 57 of NRS which ~~he~~ the financial planner, producer of insurance or ~~she~~ insurance consultant represents;**

~~**(e)**~~ **(d) A description of any license ~~he~~ the financial planner, producer of insurance or ~~she~~ insurance consultant holds;**

~~{(d)}~~ (e) A description of ~~{the}~~ any fee to be charged and the services to be provided under the agreement;

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

~~{(f)}~~ (g) A statement of whether the financial planner ~~{or life or health insurance agent or broker}~~, *producer of insurance or insurance consultant* is to receive any commission or other compensation for services in addition to ~~{the}~~ any fee paid by the client.

2. ~~{Each}~~ *A financial planner, producer of insurance or insurance consultant must:*

(a) *Provide each* client or prospective client of ~~{a}~~ *the* financial planner, ~~{life or health insurance agent or broker,}~~ *producer of insurance* or insurance consultant ~~{must be provided}~~ with a copy of ~~{the}~~ *each* agreement ~~{}~~ *entered into in accordance with this section or section 1 of this regulation; and*

(b) *Retain a copy of each agreement entered into in accordance with this section or section 1 of this regulation and make such a copy available to the Division upon request.*

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:

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

(b) Group health products provided pursuant to chapter 689B of NRS ~~{}~~; *and*

(c) *Individual health benefit plans provided pursuant to chapter 689A or 695C of NRS.*

Sec. 4. NAC 686A.340 is hereby amended to read as follows:

686A.340 Any commission received by a financial planner, agent or broker *or producer of insurance pursuant to NAC 686A.320 to 686A.340, inclusive, and section 1 of this regulation* for services related to the sale of insurance shall be deemed a premium for purposes of the tax imposed by chapter 680B of NRS.

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

LCB FILE NO. R001-18

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 686A.

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

The 2017 Legislature passed SB 209, which was signed into law by the Governor on June 12, 2017. That bill amended NRS 686A.230 by allowing the Commissioner to adopt regulations for the charging and collecting of fees for consultation and advice on individual life, health and annuity policies. In 2016, the large majority of carriers operating in Nevada either eliminated paying commissions or dramatically reduced the amount of compensation being paid to producers for individual health benefit plans. Producers do play an important role in providing guidance and advice to consumers, and the dramatic change in compensation impacted the number of producers willing to participate in the Nevada individual health market. The ability to charge a fee for consultation or related advice on individual health benefit plans is intended to keep producers in the market, by allowing them to charge an optional fee for their consultation and other services provided to willing consumers.

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 August 2, 2018, and at the hearing held on August 15, 2018. The public 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 received three responses to this proposed regulation, as follows: Heather Korbolic, the Executive Director of the Silver State Health Insurance Exchange; Jim Wadhams, Director of Fennemore Craig Attorneys; and, Grace Daidone, President of the Nevada State Association of Health Underwriters.

Ms. Korbolic recommended strengthening sections 1 and 3 of this regulation “by adding definitive language describing the time and methods of disclosure, including a requirement that the agreement for consultation be made available in the consumer’s primary language.” Ms. Korbolic also requested that language be added “in the agreement for consultation that explicitly notifies the consumer that they have the option to alternatively receive free consultation through the Nevada Health Link.” Ms. Korbolic’s last recommendation was to add “language requiring that producers charge a reasonable and uniform fee for these services.”

Mr. Wadhams stated that there appeared to be some “ambiguity about the new language’s application to group life and annuities,” and proposed clarifying language.

Ms. Daidone suggested including a time frame “for how long the disclosure is required to be kept by the producer.” Ms. Daidone also pointed out that this regulation does not require producers to charge a fee; and, that the disclosure form would not be required if a fee isn’t charged.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the comments with regard to regulation R001-18. A copy of the summary may be obtained by contacting Jack Childress, Insurance

Actuarial Analyst II, at (775) 687-0731 or jchildress@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: 6, not including staff.
- (b) Testified at the hearing: 3, not including staff.
- (c) Submitted to the agency written statements: 3 were submitted prior to the workshop and are detailed in part 2(b) above.

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
Heidi Sterner	Nevada Association of Health Underwriters	7887 W. Charleston Blvd. Ste. 140 Las Vegas, NV 89117	702-328-9763	heidijsterner@gmail.com
Robert Bishop	Bishop Insurance Agency	424 Lost Trail Dr. Henderson, NV 89014	702-595-2824	Robertjbishop1@gmail.com
Gene Furr	Menath Insurance	333 Village Blvd. Ste. 203 Incline Village, NV 89451	775-831-3132	gfurr@menath.com

Submitted to the agency written statements:

Name	Entity/Organization Represented	Business Address	Telephone No./ Business Telephone No.	E-Mail Address
Heather Korbolic	Silver State Health Insurance Exchange	2310 S. Carson Street Ste. 2 Carson City, NV 89701	775-687-9939	hkorbulic@exchange.nv.gov
Jim Wadhams	Fennemore Craig Attorneys	300 S. Fourth Street Ste. 1400 Las Vegas, NV 89101	702-692-8039	jwadhams@fclaw.com
Grace Daidone	Nevada State Association of Health Underwriters	3301 S. Virginia Street Reno, NV 89502	775-843-3329	nevadanative@yahoo.com

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:

A summary of the responses from affected businesses is the same as the summary of the public response. Please refer to the response in 2(b).

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in parts 5(b) and 2(b) above reflects the comments with regard to regulation R001-18. A copy of said summary may be obtained by contacting Jack Childress, Insurance Actuarial Analyst II, at (775) 687-0731 or jchildress@doi.nv.gov. This summary will also be made available by e-mail request to insinfo@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.

Ms. Korbolic recommended strengthening sections 1 and 3 of this regulation “by adding definitive language describing the time and methods of disclosure, including a requirement that the agreement for consultation be made available in the consumer’s primary language.” The Division agrees to part of this recommendation, by adding the clarifying language to paragraphs (h) and (i) of subsection 1, of section 1, discussed above. However, the Division feels that “the agreement for consultation be made available in the consumer’s primary language” would be burdensome, and impractical, to financial planners, producers or consultants and would add to the client’s cost.

Ms. Korbolic also requested that language be added “in the agreement for consultation that explicitly notifies the consumer that they have the option to alternatively receive free consultation through the Nevada Health Link.” The consultation agreement requirements addressed by this proposed regulation are not limited to products sold through the Silver State Health Insurance Exchange. This proposed regulation also applies to consultation related to individual health benefit plans sold off of the Exchange, in addition to group life, health and annuity policies. The Division has included several disclosure requirements related to the Silver State Health Insurance Exchange in this proposed regulation and does not recommend adding this additional disclosure requirement.

Ms. Korbolic’s last recommendation was to add “language requiring that producers charge a reasonable and uniform fee for these services.” The Division feels that “reasonable and uniform” is subjective, and the services provided by the financial

planner, producer or consultant will differ. While a uniform fee would not be practical, the proposed regulation includes numerous disclosure requirements to help the consumer make a more informed decision as to the services being offered and the reasonableness of the fee for such services.

Mr. Wadhams stated that there appeared to be some “ambiguity about the new language’s application to group life and annuities,” and proposed clarifying language. The Division found this change unnecessary, as section 1 only applies to individual health benefit plans as can be seen by the addition of paragraph (c), of subsection 3, of section 3.

Ms. Daidone suggested including a time frame “for how long the disclosure is required to be kept by the producer.” However, this change was unnecessary as this is already stated in NRS 683A.351, which states that records may be destroyed three years after the expiration of the policy.

Ms. Daidone also pointed out that this regulation does not require producers to charge a fee; and, that the disclosure form would not be required if a fee isn’t charged. The Division agrees with this assessment.

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

- (1) Both adverse and beneficial effects:
 1. Adverse: None.
 2. Beneficial: This regulation will increase the amount of potential income for producers working in the individual health insurance market in this state.

- (2) Both immediate and long-term effects:
 1. Immediate: This regulation will increase the amount of potential income for producers working in the individual health insurance market in this state.
 2. Long Term: This regulation will increase the amount of potential income for producers working in the individual health insurance market in this state.

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

- (1) Both adverse and beneficial effects:
 1. Adverse: Consumers who choose to enter into an agreement with a producer for consultation or advice on individual health benefit plans will be paying for services that, historically, were included in the premiums they paid.
 2. Beneficial: This regulation should increase the opportunity for consumers to be advised on the purchase of their family’s health

insurance policy. This should help consumers select proper deductibles, co-insurance, premiums, and formularies to help protect their family's assets.

(2) Both immediate and long-term effects:

1. Immediate: This regulation should increase the opportunity for consumers to be advised on the purchase of their family's health insurance policy. This should help consumers select proper deductibles, co-insurance, premiums, and formularies to help protect their family's assets.

2. Long Term: This regulation should increase the opportunity for consumers to be advised on the purchase of their family's health insurance policy. This should help consumers select proper deductibles, co-insurance, premiums, and formularies to help protect their family's assets.

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, as there is no overlap or duplication. The 2017 Legislature passed SB 209, which was signed into law by the Governor on June 12, 2017. That bill amended NRS 686A.230, by allowing the Commissioner to adopt regulations for the charging and collecting of fees for consultation and advice on individual life, health and annuity policies.

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 no federal regulations addressing these 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 payable to the Division. However, any fees as a result of this regulation will be up to individual financial planners, producers of insurance or insurance consultants.