NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATIONS

The State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), (775) 687-0700, is proposing the adoption, amendment or repeal of regulations pertaining to chapter **687B** of the Nevada Administrative Code ("NAC"). A workshop has been set for **9:00 a.m., on August 12, 2014**, at the Division's office located at 1818 East College Parkway, 1st floor hearing room, Carson City, Nevada 89706. Interested parties may also participate through a simultaneous videoconference conducted at the Bradley Building, 2501 East Sahara Avenue, 2nd floor conference room, Las Vegas, Nevada 89104.

The purpose of the workshop is:

1. To solicit comments from interested persons on the following general topics that may be addressed in the proposed regulation(s); and

2. To assist in determining whether the proposed regulation:

(a) Is likely to impose a direct and significant burden upon a small business; or

(b) Directly restricts the formation, operation or expansion of a small business.

Please submit any written comments no later than **August 5, 2014**.

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.

A copy of all materials relating to the proposal(s) may be obtained at the workshop or by contacting the Division, 1818 East College Parkway, Suite 103, Carson City, Nevada 89706, (775) 687-0700. A reasonable fee for copying may be charged. Members of the public who would like additional information about the proposed regulation may contact Adam Plain, Insurance Regulation Liaison, at (775) 687-0783, or via e-mail to **aplain@doi.nv.gov**.

Notice of the workshop(s) was provided via electronic means to all persons on the agency's e-mail list for administrative regulations, and this Notice of Workshop to Solicit Comments on Proposed Regulations was posted to the agency's Internet Web site at **http://doi.nv.gov/**, the Nevada Legislature's Internet Web site at **http://www.leg.state.nv.us**, and provided to or posted at the following locations:

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

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

Capitol Press Room
Capitol Building Basement
Carson City, NV 89710

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

Blasdel Building
209 East Musser Street
Carson City, NV 89701

Office of the Governor
Capitol Building
Carson City, NV 89710

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

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

Elko County Library
720 Court Street
Elko, NV 89801

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

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

Lyon County Library
20 Nevin Way
Yerington, NV 89447

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

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

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

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

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

Churchill County Library
553 South Main Street
Fallon, NV 89406

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

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

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

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

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

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

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

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

White Pine County Library
950 Campton Street
Ely, NV 89301

Members of the public who are disabled and require special accommodations or assistance at the workshop 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 24th day of July, 2014.

SCOTT J. KIPPER
Commissioner of Insurance

BRIAN SANDOVAL
Governor

STATE OF NEVADA

BRUCE H. BRESLOW
Director

SCOTT J. KIPPER
Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
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NEVADA DIVISION OF INSURANCE AGENDA

PUBLIC REGULATION HEARING and WORKSHOP

AUGUST 12, 2014

9:00 A.M.

In Carson City:
1818 E. College Pkwy., 1st Floor Hearing Room, Carson City, NV 89706
(Insurance Division Office located in Suite 103)

Videoconferenced to Las Vegas:
2501 E. Sahara Ave., 2nd Floor Conference Room, Las Vegas, NV 89104
(Insurance Division Office located in Suite 302)

PROPOSED REGULATIONS:

1. **HEARING:** **LCB FILE NO. R074-14 - Prescription Drug Formularies**
   a. **Presentation by Division of Insurance**
   b. **Public Comments to be Received**

2. **WORKSHOP:** **LCB FILE NO. R049-14 - Network Adequacy**
   a. **Presentation by Division of Insurance**
   b. **Public Comments to be Received**

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 77th (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.

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