

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 **9:30 a.m. on November 13, 2013**, at the Division’s office located at 1818 East College Parkway, 1st 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, 2nd floor conference room, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to sections 1 through 26 of Assembly Bill 425 of the 77th (2013) Regular Session of the Nevada Legislature and the addition of a new chapter 695J to 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. R074-13. Exchange Enrollment Facilitators.

A regulation relating to health insurance; establishing procedures for the certification of exchange enrollment facilitators; establishing duties for exchange enrollment facilitators; and providing other matters properly relating thereto.

(1) Why is the regulation necessary and what is its purpose? *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 and/or permits States to create new categories of persons and/or entities such as Navigators, In-Person Assisters, and Certified Application Counselors, herein collectively referred to as exchange enrollment facilitators (“EEF”). These EEFs will assist individuals and small business owners in determining eligibility for various programs offered through the ACA and in enrolling individuals and small business owners in programs for which they are deemed eligible. In order to ensure that the EEFs are sufficiently educated and accountable in their dealing with consumers, the Division of Insurance (“Division”) proposed in Assembly Bill 425 (“AB 425”) of the 77th (2013) Legislative Session to create a certification program for EEFs. AB 425 was enrolled by the Legislature on June 11, 2013 and approved by the Governor on June 12, 2013, with sections 1 – 26 becoming effective upon passage and approval. Section 25 of AB 425 requires the Commissioner of Insurance to adopt regulations “[f]or establishing and conducting an examination required... for the initial issuance and renewal of a certificate”, “[f]or the establishment of a course of instruction as required... for the initial issuance and renewal of a certificate”, and “[f]or carrying out the provisions” of the bill.*

(2) What are the terms or substance of the proposed regulation? *The proposed regulation outlines requirements for the pre-certification education of EEFs, background checks, certification testing, continuing education, and the duties owed by EEFs to consumers.*

(3) What is the anticipated impact of the regulation on the problem(s)? *The proposed regulation is anticipated to address issues related to education and accountability of EEFs, ensuring that consumers are adequately protected and served by these individuals.*

(4) Do other regulations address the same problem(s)? *No.*

(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 is anticipated to address issues related to education and accountability of EEFs, ensuring that consumers are adequately protected and served by these individuals.*

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

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

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

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

(9) What is the anticipated cost of the regulation, both direct and indirect? *The Division anticipates no significant marginal cost for the enforcement of this regulation. The Division currently enforces similar regulations for persons involved in the sale or administration of insurance. There are approximately 117,000 persons licensed in the sale or administration of insurance as of December 14, 2012; the Division anticipates a few hundred individuals will seek certification as an EEF. If the Division's estimates are correct, the population of certified EEFs will be less than 1% of the population of persons licensed in the sale or administration of insurance. So long as the incidence of misfeasance and malfeasance among the certified EEF population is similar to that among the licensed producer population, the expected increase will be statistically insignificant when compared to the existing regulatory cost.*

(10) Does the regulation establish a new fee or increase an existing fee? *The regulation includes a fee for sitting the certification examination for an exchange enrollment facilitator. The fee is to be paid directly to the Division's contracted examination vendor as compensation for administering the examination and cannot exceed \$100 US dollars per sitting. Because the fee is paid directly to the contracted examination vendor the Division anticipates collecting no additional fee revenue resulting from the proposed emergency regulation. The Silver State Health Insurance Exchange anticipates having approximately 200 exchange enrollment facilitators receiving grant funding, which results in the Division's contract vendor realizing no more than \$20,000 of fee revenue from the funded EEFs. It is unknown how many people will seek an EEF certification without receiving grant funding from the Exchange.*

(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. *The regulation overlaps, duplicates, or otherwise complements a regulation or series of regulations issued by the federal Center for Consumer Information and Insurance Oversight (CCIIO) of the Center for Medicare and Medicaid Services (CMS), a division of the Department of Health and Human Services (HHS). Section 1311(i) of the ACA, codified as 42 U.S.C. §18031(i), establishes the requirement that states create a navigator program. 42 U.S.C. §18031(i)(3) generally requires navigators to raise awareness of the availability of qualified health plans, distribute fair and impartial information concerning enrollment in qualified health plans, facilitate enrollment in qualified health plans, and provide referrals to any applicable office of health insurance consumer assistance. 42 U.S.C. §18031(i)(4-5) requires that navigators avoid conflicts of interest, provide information that is fair, accurate and impartial, and be "licensed if appropriate". On March 27, 2012 CCIIO/CMS issued final regulation CMS-9989-F which, in part, outlined the program standards for navigators; the standards were codified as 45 C.F.R §155.210. 45 C.F.R. §155.210(c)(1)(iii), detailing the entities and individuals eligible to be a navigator, stipulated that any prospective navigator "[m]eet any licensing, certification or other standards prescribed by the State or Exchange, if applicable". The preamble to CMS-9989-F, in interpreting the provisions of 45 C.F.R. §155.210(c)(2) went the additional step in determining that any*

licensing, certification or other standards prescribed by a State or Exchange cannot lead to the prospective navigator being licensed as a(n) agent/broker/producer of insurance. The regulation is necessary to fill in the gaps in 42 U.S.C. §18031 by CMS-9989-F deferring the licensure or certification of navigators to the state level.

(13) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions. *Neither 42 U.S.C. §18031 nor 45 C.F.R. §155.210 require a state to license, certify or otherwise impose standards for navigator training or conduct. The Division has proposed, and the Governor and Legislature agreed through the passage and approval of AB 425 (2013), that EEF personnel, including navigators, be properly educated and accountable in order to protect Nevada consumers, both individuals and businesses.*

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 23, 2013.** 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 regulations, 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, 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

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

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

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

Blasdel Building
209 East Musser Street
Carson City, NV 89701

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

Office of the Governor
Capitol Building
Carson City, NV 89710

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

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

Churchill County Library
553 South Main Street
Fallon, NV 89406

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

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

Elko County Library
720 Court Street
Elko, NV 89801

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

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

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

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

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

Lyon County Library
20 Nevin Way
Yerington, NV 89447

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

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

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 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.

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 9th day of October, 2013.



SCOTT J. KIPPER
Commissioner of Insurance

STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INSURANCE

Determination of Necessity of Small Business Impact Statement

R074-13

THE REGULATION PROPOSES STANDARDS FOR PRECERTIFICATION EDUCATION, CERTIFICATION TESTING, AND CONTINUING EDUCATION OF EXCHANGE ENROLLMENT FACILITATORS AS WELL AS DETAILING THE DUTIES OWED BY CERTIFIED EXCHANGE ENROLLMENT FACILITATORS TO CONSUMERS.

To become effective: November 29, 2013

1. **BACKGROUND**

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 and/or permits States to create new categories of persons and/or entities such as Navigators, In-Person Assisters, and Certified Application Counselors, herein collectively referred to as exchange enrollment facilitators (“EEF”). These EEFs will assist individuals and small business owners in determining eligibility for various programs offered through the ACA and in enrolling individuals and small business owners in programs for which they are deemed eligible. In order to ensure that the EEFs are sufficiently educated and accountable in their dealing with consumers, the Division of Insurance (“Division”) proposed in Assembly Bill 425 (“AB 425”) of the 77th (2013) Legislative Session to create a certification program for EEFs. AB 425 was enrolled by the Legislature on June 11, 2013 and approved by the Governor on June 12, 2013, with sections 1 – 26 becoming effective upon passage and approval. Section 25 of AB 425 requires the Commissioner of Insurance to adopt regulations “[f]or establishing and conducting an examination required... for the initial issuance and renewal of a certificate”, “[f]or the establishment of a course of instruction as required... for the initial issuance and renewal of a certificate”, and “[f]or carrying out the provisions” of the bill.

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)(check one)

NO

YES

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

Nevada Revised Statute 233B.0382 defines a small business as “a business conducted for profit which employs fewer than 150 full-time or part-time employees.”

The Silver State Health Insurance Exchange (“SSHIX”) has announced grants to seven entities that will receive funding to operate as exchange enrollment facilitators:

1. Inter-Tribal Council of Nevada
2. Know Your Care
3. Great Basin Primary Care
4. Consumer Assistance and Resource Enterprise
5. East Valley Family Services

6. Latin Chamber of Commerce Community Foundation
7. Richard Allen Community Outreach

Each of these seven entities is a non-profit organization and outside of the statutory definition of a small business.

Other entities may receive the EEF certification for employees but these entities will not be receiving grant funding from the SSHIX. As the proposed regulation details a certification process which is opt-in by statute (no entity is forced to be an EEF) it does not impose a direct burden on any entity. The cost of opting-in is currently estimated to be approximately \$500 per person, which does not constitute a significant economic burden.

The Division does not anticipate the proposed regulation imposing a direct and significant economic burden on any small business not opting-in. The Division acknowledges that currently licensed producers of insurance are concerned that the activities of certified EEFs will impinge upon their business. It is noted that EEFs are authorized under the relevant federal legislation and this regulation is not responsible for any economic impact resulting from that legislation.

This analysis was conducted by: Adam Plain, CPCU AIE AFSB AIAF API ARC ARE
Insurance Regulation Liaison
Nevada Division of Insurance

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)

October 9, 2013
(DATE)


SCOTT J. KIPPER
Commissioner of Insurance

Small Business Impact Statement

Sections 1-26 of Assembly Bill 425 of the 77th (2013) Legislative Session

4. DESCRIPTION OF SOLICITATION (NRS 233B.0609.1.a)

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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)

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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

Pursuant to NRS 233B.0608.2 and the determination above that the proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business, this section is not required to be completed.

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)

(DATE)

SCOTT J. KIPPER
Commissioner of Insurance