NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS
AND WORKSHOP AGENDA

The State of Nevada, Department of Business and Industry, Division of Insurance ("Division") is proposing the adoption, amendment or repeal of regulations pertaining to chapter 686A of the Nevada Administrative Code ("NAC"). A workshop has been set for **1:30 p.m., on August 2, 2018**, at the following location:

1st Floor Hearing Room
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, Nevada 89706

Interested persons may also participate through a simultaneous videoconference conducted at:

4th Floor Nevada Room
Nevada State Business Center
Nevada Division of Insurance
3300 W. Sahara Avenue, Suite 275
Las Vegas, Nevada 89102

The purpose of the workshop is to solicit comments from interested persons on the following general topic(s) that may be addressed in the proposed regulation; and to assist in determining whether the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restricts the formation, operation or expansion of a small business. Please submit any written comments no later than **July 26, 2018**.

> **LCB File No. R001-18. Producer Fees.** 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 for audit; 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.

A copy of all materials relating to the proposal(s) may be obtained at the workshop or by visiting the Division's Internet Web site at http://doi.nv.gov/ or by contacting the Division, 1818 E. 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 a proposed regulation may contact Susan Bell, Legal Secretary, at (775) 687-0704, or via e-mail to suebell@doi.nv.gov.

Notice of the workshop was provided via electronic means to all persons on the agency's e-mail list for noticing of administrative regulations. 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 at the following locations:

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

Legislative Building
401 South Carson Street
Carson City, Nevada 89701

Blasdel Building
209 East Musser Street
Carson City, Nevada 89701

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

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

Churchill County Library
553 South Main Street
Fallon, Nevada 89406

Elko County Library
720 Court Street
Elko, Nevada 89801

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

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

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

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

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

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

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

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

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

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

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

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

Las Vegas-Clark County Library District
7060 W. Windmill Lane
Las Vegas, NV 89113

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

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/Downtown Reno Library
P.O. Box 2151
Reno, Nevada 89505-2151

White Pine County Library
950 Campton Street
Ely, Nevada 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, no later than five (5) working days before the workshop: 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, or suebell@doi.nv.gov.

DATED this 12th day of July, 2018.

BARBARA D. RICHARDSON
Commissioner of Insurance

WORKSHOP AGENDA

The State of Nevada, Department of Business and Industry, Division of Insurance

August 2, 2018 • 1:30 p.m.

Location of Workshop:
Nevada Division of Insurance
1818 E. College Pkwy., 1st Floor Hearing Room
Carson City, NV 89706
(Division Offices located in Suite 103)

Available via Videoconference at:
Nevada Division of Insurance
3300 W. Sahara Ave., 4th Floor Nevada Room
Las Vegas, NV 89102
(Division Offices located in Suite 275)

1. Open Workshop: R001-18.

2. Presentation and Discussion of Proposed Regulation. (For Possible Action)

LCB File No. R001-18. Producer Fees. 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 for audit; 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.

3. Public Comment.

4. Close Workshop: R001-18.

5. Adjourn.

Supporting public material for this workshop may be requested from Susan Bell, Legal Secretary, Nevada Division of Insurance, 1818 E. College Parkway, Carson City, Nevada 89706, (775) 687-0704, or suebell@doi.nv.gov.

Note: Any agenda item may be taken out of order; items may be combined for consideration by the public body; items may be pulled or removed from the agenda at any time; and, discussion relating to an item may be delayed or continued 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 the Commissioner's secretary, in writing, no later than five (5) working days before the workshop: 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706, or suebell@doi.nv.gov.

NOTICES FOR THIS WORKSHOP 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, 3300 W. Sahara Avenue, Suite 275, Las Vegas, Nevada 89102
Nevada State Business Center, 3300 W. Sahara Avenue, Las Vegas, Nevada 89102
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 Dept. of Employment, Training and Rehabilitation, 2800 E. Saint Louis Avenue, Las Vegas, Nevada 89104
The State of Nevada Website (www.nv.gov)
The Nevada State Legislature Website (www.leg.state.nv.us)
The Nevada Division of Insurance Website (www.doi.nv.gov)

REVISED PROPOSED REGULATION OF

THE COMMISSIONER OF INSURANCE

LCB File No. R001-18

July 11, 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 for audit; 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, as amended by section 11 of Senate Bill No. 209, chapter 560, Statutes of Nevada 2017, at page 4004) 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 for audit by the Division of Insurance of the Department of Business and Industry.

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:

1. 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:

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

(b) 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.

(c) The name of any health insurance carrier appointment.

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

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

(f) 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 a policy of insurance offered through 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.

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

(h) The following statement that must be signed and dated by the client or prospective client:

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.

(i) The following statement that must be signed and dated by the financial planner, producer of insurance or insurance consultant:

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.

2. As used in this section, "health insurance carrier appointment" means an appointment by an insurance carrier that:

(a) Is filed with the Division; and

(b) Lists the producers of insurance that are authorized to represent the insurance carrier.

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;

~~[(c)]~~ ***(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;

~~[(c)]~~ *(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 for audit by the Division.

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.

STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INSURANCE

Determination of Necessity - Small Business Impact Statement
NRS 233B.0608(1)

Producer Fees Regulation

This regulation proposes to expand the ability of producers to charge fees for consultation or related advice for individual health benefit plans, and to provide additional disclosures that are required to be included in the written agreements between the producer and his or her prospective client.

EFFECTIVE DATE OF REGULATION:
Upon filing with the Nevada Secretary of State

1. BACKGROUND.

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 the sales of 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 Nevada's individual health market. This proposed regulation is intended to keep producers in the Nevada market, by allowing them to charge a fee for their consultation and other service provided to willing consumers. A large number of disclosures are to be included as part of the required written agreement to add necessary consumer protections and information related to the Nevada health insurance market.

2. DESCRIPTION OF SOLICITATION SHOWING A CONCERTED EFFORT. NRS 233B.0608(1).

This proposed regulation is limited to allowing Nevada's insurance producers to charge fees for consultation and other services related to individual health benefit plans. Producers are currently allowed to charge fees for consulting services on group life, health and annuity products, so the change contained in this regulation is limited to individuals, not small businesses. Because of that, the Life and Health Section of the Nevada Division of Insurance determined there was no reason or benefit to be gained from polling non-insurance small businesses about the impact of this regulation. Additionally, an advisory group of Nevada health insurance producers, who are also small business owners, provided comments relevant to creating this regulation.

3. 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).

☒ NO ☐ YES

4. HOW WAS THAT CONCLUSION REACHED? NRS 233B.0608(3).

The Life and Health Section of the Nevada Division of Insurance internally analyzed the impact of this regulation on Nevada small businesses. Because the new regulation only applies to consultation and other services related to individual health insurance benefit plans, it was determined that this regulation would not have any negative impact on small businesses.

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby certify 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 this statement was prepared properly and the information contained herein is accurate. (NRS 233B.0608(3))

1/3/18
(DATE)

BARBARA D. RICHARDSON
Commissioner of Insurance

Small Business Impact Statement
NRS 233B.0608(2)-(4) and 233B.0609

Producer Fees Regulation

This regulation is proposed to expand the ability of producers to charge fees for consultation or related advice for individual health benefit plans, and to provide additional disclosures that are required to be included in the written agreements between the producer and his or her prospective client.

1. SUMMARY OF COMMENTS RECEIVED FROM SMALL BUSINESSES. NRS 233B.0609(1)(a).

An advisory group of health insurance producers from both Northern and Southern Nevada worked on creating the language for this regulation. These producers are also small business owners in the state, and their comments were considered in drafting the regulation.

Other interested parties may receive a copy of this summary by contacting Susan Bell, Legal Secretary, Nevada Division of Insurance, at (775) 687-0704 or suebell@doi.nv.gov.

2. HOW WAS THE ANALYSIS CONDUCTED? NRS 233B.0609(1)(b).

This proposed regulation is limited to allowing Nevada's insurance producers to charge fees for consultation and other services related to individual health benefit plans. Producers are currently allowed to charge fees for consulting services on group life, health and annuity products, so the change contained in this regulation is limited to individuals, not small businesses. Because of that, the Life and Health Section of the Nevada Division of Insurance determined there was no reason or benefit to be gained from polling non-insurance small businesses about the impact of this regulation. Additionally, an

advisory group of Nevada health insurance producers, who are also small business owners, provided comments relevant to creating this regulation.

3. ESTIMATED ECONOMIC EFFECT ON SMALL BUSINESSES THE REGULATION IS TO REGULATE. NRS 233B.0609(1)(c).

This regulation is expected to have no impact on non-insurance small businesses in the State of Nevada. There may be an economic benefit to small businesses that are insurance agencies or brokerages which receive reduced or no compensation from the insurance carrier, but can now charge a fee to the consumer.

4. METHODS CONSIDERED TO REDUCE IMPACT ON SMALL BUSINESSES. NRS 233B.0609(1)(d).

There were no methods considered since the regulation only applies to individual health insurance benefit plans and the producer fee is for an optional service made available to the general public.

5. ESTIMATED COST OF ENFORCEMENT. NRS 233B.0609(1)(e).

There is no anticipated cost of enforcement for this regulation. The existing staff of the Division of Insurance is expected to be sufficient.

6. FEE CHANGES. NRS 233B.0609(1)(f).

This regulation does not include any new state fees or charges.

7. DUPLICATIVE PROVISIONS. NRS 233B.0609(1)(g).

This regulation does not duplicate any existing federal, state or local standards. It is also not more stringent than any existing federal, state or local standards.

8. REASONS FOR CONCLUSIONS. NRS 233B.0609(1)(h).

The Life and Health Section of the Nevada Division of Insurance internally analyzed the impact of this regulation on Nevada small businesses. Because the new regulation only applies to consultation and other services related to individual health insurance benefit plans and the consultation is an optional service that the consumer chooses whether to accept or not, it was determined that this regulation would not have any negative impact on small businesses.

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby certify 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 this statement was prepared properly and the information contained herein is accurate. (NRS 233B.0609(2))

1/3/18
(DATE)

BARBARA D. RICHARDSON
Commissioner of Insurance