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DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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**NOTICE OF INTENT TO ACT UPON REGULATION
LCB File No. R186-22
AND HEARING AGENDA**

The Nevada Division of Insurance (“Division”) is proposing the adoption of regulations pertaining to chapter(s) 689B, 689C and 695B of the Nevada Administrative Code (“NAC”). The hearing shall take place as follows:

Date: November 10, 2022
Time: 9:00 a.m.
Location: This meeting will be held virtually via Webex, which allows participation by video or telephone.*

To join by Webex, click on the URL and enter the meeting number and password when prompted.

URL: <https://doinv.webex.com/doinv/j.php?MTID=m96d47116db02fd6029a6e5c032606cca>

Meeting Number: 2633 754 7098

Password: F4s26pQPYgT

To join by telephone, call the toll-free number and enter the access code when prompted.

Phone-in Access: 1-844-621-3956 United States Toll Free

Access Code: 2633 754 7098

If you need help using Webex, visit <https://help.webex.com>.

Live public comment and written public comment will be taken as designated in the Hearing Agenda.

* There is no physical location designated for this hearing. Accordingly, any person planning to participate must participate by using the Webex link, for video access, or by calling the phone-in access for telephone access. Meeting materials are available on the Division’s website at: <https://doi.nv.gov/News-Notices/Regulations/>.

The purpose of the hearing is to solicit comments from interested persons on the 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.

HEARING AGENDA

1. Open Hearing: R186-22.
2. Presentation of Proposed Regulation.

[LCB File No. R186-22 – STOP LOSS INSURANCE](#)

A REGULATION relating to stop-loss insurance; requiring certain policies for stop-loss insurance relating to group health plans to satisfy certain standards and include certain provisions and information; requiring an insurer that issues a policy for stop-loss insurance to annually provide certain information to the Commissioner of Insurance; and providing other matters properly relating thereto. A copy of the proposed regulation prepared by the Legislative Counsel is available by clicking on the following link: <https://www.leg.state.nv.us/Register/2022Register/R186-22P.pdf>

3. Public Comment.

The hearing officer will indicate when live public comment will be taken. Public comment may be limited to three minutes per speaker.

4. Close Hearing: R186-22.

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.

A copy of all materials relating to the proposal may be obtained by visiting the Division's internet website at <https://doi.nv.gov/News-Notices/Regulations/> or by contacting the Division (regs@doi.nv.gov or 775-687-0700). Members of the public who would like additional information about a proposed regulation may contact the Division by email to regs@doi.nv.gov. Members of the public are encouraged to submit written comments for the record no later than **November 4, 2022**. Persons wishing to comment upon the proposed actions of the Division may appear at the hearing via Webex or telephone and/or may address their comments, data, views, or arguments in written form, by email to regs@doi.nv.gov or by mail to 1818 E. College Parkway, Suite 103, Carson City, NV 89706.

We are pleased to make reasonable accommodations for attendees with disabilities. Please notify the Division of your request for reasonable accommodation in writing, no later than five (5) working days before the hearing via email to regs@doi.nv.gov.

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.

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

(1) Why is the regulation necessary and what is its purpose?

Under a self-insured plan option, the employer takes on the financial risk of paying claims for covered benefits. The employer may additionally purchase a stop-loss insurance plan, which protects the employer against large, unpredictable claims above a specified level during a given year. This level, known as the aggregate attachment point, is the dollar amount that triggers the end of the employer’s liability, and where the stop-loss insurer begins to pay for claims incurred by the group covered.

Although self-funding has traditionally been more prevalent among large employers, small employers have become more attracted to it because such plans are exempt from many regulatory requirements, including some of the new rules under the Affordable Care Act (“ACA”). For example, self-funded plans are not subject to the ACA’s essential health benefit requirements and premium rating rules (including the law’s prohibition on health status and gender rating), and are not required to pay the annual fee that insurers must pay on fully insured products. Nevada self-funded plans are still required to provide the mandated benefits that are included in the Nevada Revised Statutes (“NRS”).

Self-insured plans do potentially create greater risk to small employers. Small employer is defined pursuant to NRS 689C.095 and 42 U.S.C. § 18024(b)(2) as an employer who employed an average of at least 1 but not more than 50 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the event that the group’s health status declines, the stop-loss insurer may drastically raise premiums, or even refuse to renew coverage, as the change in health status makes the group more expensive to cover.

This proposed regulation makes similar changes to the Nevada Administrative Code (NAC) 689B.350, Group and Blanket Health Insurance, 695B.250, Health Insurance for Small Employers, and 689C.250, Nonprofit Corporations for Hospital, Medical, and Dental Service. The proposed regulation amends these sections of the NAC by updating the stop-loss requirements to prohibit a policy from providing first dollar health coverage of an individual, instituting a minimum annual attachment point for claims incurred per individual, increasing the annual attachment point for claims for small employer groups, prohibiting small employers from laserling (so unhealthy employees do not adversely impact the fully-insured markets), requiring issuance of a uniform disclosure form (to help make employers better informed of the risks they are assuming in a self-insured plan), and requiring an insurer to provide the Commissioner with certain information on an annual basis.

(2) What are the terms or substance of the proposed regulation? Provide a description of the subjects, issues and problems involved.

Stop-loss insurance is coverage for employers that self-fund, or self-insure their own employee health plans. Rather than paying premiums to an insurance company to cover health care expenses for employees,

self-insured employers pay their employees' health claims and contract with companies to administer the health plan for each employee. Most large companies are self-insured.

By self-funding their own plans, businesses take on the risk of their employees' health care expenses. Stop-loss insurance is a layer of protection in case health insurance claims exceed a certain threshold.

There are two types of stop-loss insurance--individual coverage and aggregate coverage. Individual stop-loss insurance covers extreme losses for an individual person covered by the plan. Aggregate stop-loss coverage protects employers when total claims by the entire group exceed a certain level.

The proposed regulation will prohibit a stop-loss policy from providing first dollar coverage which supports the concept that stop-loss policies are contracts between the carrier and the employer and do not cover individuals.

The regulation increases the annual aggregate attachment point for a small employer group to the lower of 120% of expected claims or twenty thousand dollars (\$20,000.00); a large employer group remains at 110% of expected claims. This distinction of the attachment reimburses the employer for total claims that exceed expected claims by more than the established percentage. Although the attachment point for small employers has doubled, the impact of this increase should not be significant.

As employers seek to provide health coverage for their employees, the State has seen an increased interest in these types of health plan arrangements. Definitions and specific carrier filing requirements have been added, as well as the inclusion of minimum disclosure requirements. It is important to provide clear direction to carriers as to the filing, content and disclosure requirements associated with these plans as well as provide employers with the information they need before they contract with a stop-loss carrier.

(3) What is the anticipated impact of the regulation on the problem(s)?

The proposed regulation will set clear requirements for carriers offering stop-loss products to small employers and for small employers that choose to participate in these self-funded arrangements. The individual attachment point is set at \$10,000 minimum, and the minimum aggregate attachment point has doubled to \$20,000. The prohibition of layering in small employer contracts will provide added protection to those individuals determined to have high health risks that may result in a higher claims experience for the group.

The prescribed disclosure form will ensure that employers that choose to purchase a stop-loss product will be provided the required information in a consistent and uniform manner. The required reporting for carriers selling stop-loss products will allow the Division to assess the performance of stop-loss products and to monitor the small group markets for any potential impacts caused by these products.

(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 regulation provides clarification to small and large employer groups wishing to contract with a stop-loss insurer when they provide a health plan for their employees. It further requires increased disclosures to employers entering into this type of arrangement, which will increase their awareness of the risk and exposures they are accepting.

(7) What is the anticipated economic benefit of the regulation? Provide a statement as to potential beneficial impact on the following:

- a. Public
 1. Immediate: The provisions of this regulation will provide individual consumers and employer groups with clarification of the requirements and protections afforded to stop-loss policies in Nevada. These protections, as well as renewed interest in these policies, could potentially increase marketing of these policies in the group employer market.
 2. Long Term: Stop-loss contracts may become more common and create an attraction among employer groups. This could also encourage additional employers to provide health coverage to their employees.
- b. Insurance Business
 1. Immediate: These plans are not new to the market but have seen a renewed interest. The provisions of the proposed regulation will allow insurance carriers to offer employer groups health plan options that may be more attractive and perhaps fit their needs more effectively.
 2. Long Term: The long term effect is unknown as this is an ever-changing market and new products are introduced all the time. The regulation will continue to support the stop-loss market that is currently in place.
- c. Small Businesses
 1. Immediate: The Division does not anticipate an immediate economic benefit to small businesses.
 2. Long Term: The Division does not anticipate a long-term economic benefit to small businesses.
- d. Small Communities
 1. Immediate: The Division does not anticipate an economic benefit for small communities beyond the additional consumer protections it will provide to the individual members of the public.
 2. Long Term: The Division does not anticipate an economic benefit for small communities beyond the additional consumer protections it will provide to the individual members of the public.
- e. Government Entities
 1. Immediate: The Division does not anticipate an economic benefit on government entities.
 2. Long Term: The Division does not anticipate an economic benefit on government entities.

(8) What is the anticipated adverse impact, if any? Provide a statement as to any anticipated adverse impact, including adverse economic effects, on the following:

- a. Public
 - 1. Immediate: The Division does not anticipate an adverse impact on the public.
 - 2. Long Term: The Division does not anticipate an adverse impact on the public.
- b. Insurance Business
 - 1. Immediate: The Division anticipates little from this regulation for insurance carriers. The impact will be minimalized given that most carriers operate in states outside of Nevada that have already adopted many of these provisions. Carriers currently provide a disclosure of information to policyholders upon issuance of a policy. The transition to a prescribed uniform document should have little impact.
 - 2. Long Term: The Division anticipates a small impact from this regulation for insurance carriers. The impact will be minimized given that most carriers operate in states outside of Nevada that have already adopted many of these provisions. The inclusion of the requirement to submit certain information to the Commissioner on an annual basis should have little impact.
- c. Small Businesses
 - 1. Immediate: The Division does not anticipate an immediate adverse impact.
 - 2. Long Term: The Division does not anticipate a long term adverse impact.
- d. Small Communities
 - 1. Immediate: No adverse impact is anticipated by this regulation.
 - 2. Long Term: No adverse impact is anticipated by this regulation.
- e. Government Entities
 - 1. Immediate: No adverse impact is anticipated by this regulation.
 - 2. Long Term: No adverse impact is anticipated by this regulation.

(9) What is the anticipated cost of the regulation, both direct and indirect? Provide a statement as to the cost of:

- a. Enactment: The proposed regulation places specific requirements on the structure of the policy itself rather than on the Division. There is the requirement on the carrier to submit information to the Commissioner upon her request. However, the Division does not anticipate any additional costs from the proposed regulations.
- b. Enforcement: The Division does not anticipate any additional costs from the proposed regulations.
- c. Compliance: The Division does not anticipate any additional costs from the proposed regulations.

(10) Provide a statement indicating whether the regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee or increase an existing fee.

(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.

The Division sent a survey to the 110 interested parties in Nevada to determine the effect of proposed changes to NAC 689B.350. Responses were received from January 8th through January 30th of 2018.

The Division also sent a survey to 11 Chambers of Commerce across Nevada, asking their membership to provide input on the perceived impact of the proposed regulation.

(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 does not overlap or duplicate any existing federal, state or local standards and is not more stringent than any existing federal, state or local standards.

(13) If the regulation is required pursuant to federal law, provide a citation and description of the federal law.

The regulation is not required pursuant to federal law.

(14) If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions.

The regulation does not include provisions that are more stringent than a federal regulation.

Notice of the hearing has been provided as follows:

By email to all persons on the Division's e-mail list for noticing of administrative regulations.
By email for posting by the Nevada State Library, Archives and Public Records Administrator.
By email for posting by the Nevada Legislature.
Published to the Nevada Legislature website: <https://leg.state.nv.us/>.
Published to the Division of Insurance website: <https://doi.nv.gov/>.
Published to the State of Nevada Public Notice website: <https://notice.nv.gov/>.

DATED this 7th day of October 2022.



BARBARA D. RICHARDSON
Commissioner of Insurance