

STEVE SISOLAK
Governor

STATE OF NEVADA

TERRY REYNOLDS
Director



BARBARA D. RICHARDSON
Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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**NOTICE OF INTENT TO ACT UPON REGULATION
LCB File No. R127-20
AND HEARING AGENDA**

The Nevada Division of Insurance ("Division") is proposing the adoption, amendment, or repeal of regulations pertaining to chapter 686B of the Nevada Administrative Code ("NAC"). The hearing shall take place as follows:

Date: November 5, 2020
Time: 10:00 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=m20da3e4e7e5bff36cdf603f8db6e7c6>
Meeting Number: 132 252 3156
Password: X9uNrn3DqW3

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: 132 252 3156

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

*Pursuant to Governor Sisolak's March 22, 2020 Declaration of Emergency Directive 006 (extended by Declaration of Emergency Directive 029), the requirement contained in NRS 241.023.1(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). Accordingly, any person planning to participate must participate using the Webex link for video access or calling the phone-in access for telephone access. Meeting materials are available on the Division's website at: <http://doi.nv.gov/News-Notices/Regulations/>.

The purpose of the hearing 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.

HEARING AGENDA

1. Open Hearing: R127-20.
2. Presentation of Proposed Regulation.

LCB File No. R127-20. ACTUARIAL RATE REVIEW.

A regulation relating to insurance; prescribing requirements concerning the review of filed rates for health and dental plans; and providing other matters properly relating thereto.

3. Public Comment.
4. Close Workshop: R127-20.

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 meeting host/presenter, within his/her discretion, may allow for public comment on individual agenda items. Public comment may be limited to three minutes per speaker.

Supporting public material for this workshop may be requested by sending an email to the Division at regs@doi.nv.gov.

Persons wishing to comment upon the proposed actions of the Division may appear at the hearing via Webex and/or may address their comments, data, views or arguments, in written form, to the Division via email (regs@doi.nv.gov) or mail (1818 East College Parkway, Suite 103, Carson City, Nevada 89706). **Written submissions must be received by the Division on or before October 29, 2020.** Members of the public are encouraged to submit written comments for the record.

A copy of all materials relating to the proposal may be obtained by visiting the Division's internet website 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 the Division by email at regs@doi.nv.gov.

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

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?

The Division of Insurance (“Division”) uses actuarial analysts, certified actuaries, or both to review rates filed for health and dental plans in Nevada. The reviews are similar, but certified actuaries provide more technical and comprehensive reviews. The use of actuarial analysts, certified actuaries, or both to review rates filed for health and dental plans was set up to meet provisions of the Patient Protection and Affordable Care Act (“ACA”) for the Division to attain the status of an “ACA Effective Rate Review Program.” In order to ensure that the costs of non-ACA health and dental plans do not increase, and to maintain rate review expertise at the Division consistent with NAIC standards, Division actuarial analysts continued performing rate reviews on non-ACA health and dental plans after the ACA took effect.

In the 2019 Legislative Session, the Division sought authority to allow the Commissioner to assess against an insurer the actual costs for an external actuarial review of a rate filing. LCB drafters modified the amendment by adding language to NRS 686B.112, subsection 1 requiring the Commissioner to perform an actuarial review for each rate filing of a health plan. See SB 86 (2019 Legis. Sess.). This statutory change requires all health products to be actuarially reviewed. However, not all rates filed for health and dental plans need such a technical and comprehensive review by an actuary to ensure a stable health insurance market.

The Commissioner has the authority by rule to exempt any person, class of persons, or any market segment from any requirement for rates and service organizations. NRS 686B.040.1. If the Commissioner does not exempt non-ACA health and dental plans from being actuarially reviewed, consumers will likely see an increase in insurance costs without experiencing a significant benefit to the market or product in general. This regulation is intended to allow the Commissioner to continue using the rate review process managed by the Division’s actuarial analysts. Thus, in lieu of the more costly actuarial review performed by a certified actuary, the Division’s actuarial analysts will review non-ACA health and dental plans filed under the authority of NRS Chapters 689A, 689B, 689C, 695B, 695C, 695D and 695F.

Given the impact to Nevada consumers, the Division believes it is appropriate and in the best interest of the health insurance market for the Division to continue managing the rate review process for non-ACA health and dental plans.

(2) What are the terms or substance of the proposed regulation?

This regulation is intended to exempt non-ACA health and dental plans from a certified actuarial review of their filed rates.

Prior to the ACA, the Division conducted rate reviews of all health and dental products—actuarial reviews were not generally conducted unless issues were identified in the rate review. Actuarial reviews are required by the ACA for states to meet the Effective Rate Review Program requirements under Federal Rule 45 CFR part 145 for health benefit plans and ACA dental plans. Under the federal law, actuarial reviews of ACA health and dental plans must be performed by certified actuaries. This can be accomplished by either having a certified actuary perform the actuarial review, or by combining a review by both a qualified Division actuarial staff and a certified actuary.

Due to limited timeframes to review ACA health and dental plans, as well as the technical and comprehensive

nature of an actuarial review, the Division has outsourced most actuarial reviews, while maintaining rate reviews in-house. Consistent with its process prior to enactment of the ACA, the Division did not refer non-ACA health and dental plans for actuarial review, and this market segment has remained stable.

Additionally, the costs associated with actuarial reviews by an external actuarial firm far exceed the costs of performing a rate review by Division actuarial staff. If required to conduct actuarial reviews on non-ACA health and dental plans, the non-ACA health and dental markets will likely experience rate increases.

Accordingly, not exempting non-ACA health and dental plans from costly actuarial reviews when rate reviews conducted by the Division are sufficient to achieve the purpose of the review is an unnecessary application of NRS 686AB.112. Division staff has the necessary training and experience to review, analyze, and verify that rates filed for non-ACA health and dental plans meet the statutory rate standards that are necessary to protect Nevada's insurance consumers and the State's insurance markets.

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

The regulation is anticipated to exempt non-ACA health and dental plans from unnecessary costly actuarial review, which, in turn, will reduce the cost of insurance regulation by not requiring a certified actuary to perform a comprehensive and technical actuarial review of non-ACA filed health and dental plan rates. This exemption will follow the existing form of rate review which has been performed by Division staff for years. This regulation is also expected to prevent an increase in the cost of non-ACA health and dental plans, which is likely to occur if this exemption is not adopted.

(4) Do other regulations address the same problem(s)?

No other regulations address this problem.

(5) Are alternate forms of regulation sufficient to address the problem(s)?

There are no other forms of regulation that can address the problem.

(6) What value does the regulation have to the public?

This regulation is expected to maintain the cost to carriers for review of non-ACA health and dental plan rates. Thus, exempting non-ACA health and dental plans from actuarial review will ultimately benefit consumers since higher costs to insurers tend to be passed to consumers in the way of higher rates, without compromising adequate review of non-ACA health and dental plan rates.

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

a. Public

1. Immediate: *This will ensure consumers do not experience an increase in rates due to unnecessary actuarial review of non-ACA health and dental plans.*
2. Long-Term: *This will ensure consumers do not experience an increase in rates due to unnecessary actuarial review of non-ACA health and dental plans.*

b. Insurance Business

1. Immediate: *This should keep the costs for non-ACA health plans lower since carriers*

- will not be assessed for the cost of an outside actuarial review of their filed rates.*
2. Long-Term: *This will help keep the cost of non-ACA health plans lower.*

c. Small Businesses

1. Immediate: *This should keep costs lower for non-ACA small group health plans.*
2. Long-Term: *This should keep costs lower for non-ACA small group health plans.*

d. Small Communities

1. Immediate: *No impact.*
2. Long-Term: *No impact.*

e. Government Entities

1. Immediate: *No impact.*
2. Long-Term: *No impact.*

(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?

- a. Enactment: *No cost, as this has been the Division's practice through 2019.*
- b. Enforcement: *No additional cost.*
- c. Compliance: *No additional cost.*

(10) Does the regulation establish a new fee or increase an existing fee?

This regulation will not establish nor create any new or additional fees.

(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.

This regulation was discussed and considered by the Division's Life and Health Section staff. It was determined that, since this regulation is designed to continue the Division's existing practices regarding rate review of non-ACA health and dental plan filings, this could not have any impact on the small businesses of Nevada. This regulation benefits insurance companies that offer non-ACA health and dental plans.

(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.

There are no other regulations of other state or local government agencies that overlaps or duplicates this proposed regulation.

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

This proposed regulation is not required pursuant to any 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.

This regulation contains no provisions which are more stringent than a federal regulation regulating the same activity.

Notice of the hearing was provided via electronic means as follows:

To all persons on the Division's e-mail list for noticing of administrative regulations.

To main public libraries in all Nevada counties and the Nevada State Library, Archives and Public Records Administrator.

Division of Insurance website: <http://doi.nv.gov>

Nevada Legislature website: <http://www.leg.state.nv.us>

State of Nevada Public Notice website: <http://www.notice.nv.gov>.

DATED this 30th day of September 2020.

BARBARA D. RICHARDSON
Commissioner of Insurance

By: Stephanie B McGee
STEPHANIE B. MCGEE
Chief Deputy Commissioner
With Delegation of Authority

STEPHEN F. SISOLAK
Governor

STATE OF NEVADA



TERRY REYNOLDS
Director

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DEPARTMENT OF BUSINESS AND INDUSTRY

DIVISION OF INSURANCE

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TO: STEPHANIE B. MCGEE
Chief Deputy Commissioner

FROM: BARBARA RICHARDSON
Commissioner of Insurance

DATE: September 15, 2020

SUBJECT: Delegation of Authority in the Commissioner's Absence

I hereby issue a Delegation of Authority for you to act on my behalf when I am absent from the State September 18, 2020, through September 30, 2020. You are empowered to exercise all authority necessary to handle matters coming before the Division of Insurance, unless otherwise delegated.

A handwritten signature in black ink, appearing to be "BR", is written over a horizontal line.

BARBARA D. RICHARDSON
Commissioner of Insurance

NRS 679B.110 Delegation of powers.

1. The Commissioner may delegate to his or her deputy, examiner or an employee of the Division the exercise or discharge in the Commissioner's name of any power, duty or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the Commissioner.
2. The official act of any such person acting in the Commissioner's name and by his or her authority shall be deemed an official act of the Commissioner.

(Added to NRS by 1971, 1563; A [1991, 1615](#); [1993, 1898](#))

**STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INSURANCE**

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

Rate Review of Non-ACA Health Plans Filings

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

1. BACKGROUND.

The Division of Insurance (“Division”) uses actuarial analysts, certified actuaries, or both to review rates filed for health and dental plans in Nevada. The reviews are similar, but certified actuaries provide more technical and comprehensive reviews. The use of actuarial analysts, certified actuaries, or both to review rates filed for health and dental plans was set up to meet provisions of the Patient Protection and Affordable Care Act (“ACA”) for the Division to attain the status of an “ACA Effective Rate Review Program.” In order to ensure that the costs of non-ACA health and dental plans do not increase, and to maintain rate review expertise at the Division consistent with NAIC standards, Division actuarial analysts continued performing rate reviews on non-ACA health and dental plans after the ACA took effect.

In the 2019 Legislative Session, the Division sought authority to allow the Commissioner to assess against an insurer the actual costs for an external actuarial review of a rate filing. LCB drafters modified the amendment by adding language to NRS 686B.112, subsection 1 requiring the Commissioner to perform an actuarial review for each rate filing of a health plan. *See* SB 86 (2019 Legis. Sess.). This statutory change requires all health products to be actuarially reviewed. However, not all rates filed for health and dental plans need such a technical and comprehensive review by an actuary to ensure a stable health insurance market.

The Commissioner has the authority by rule to exempt any person, class of persons, or any market segment from any requirement for rates and service organizations. NRS 686B.040.1. If the Commissioner does not exempt non-ACA health and dental plans from being actuarially reviewed, consumers will likely see an increase in insurance costs without experiencing a significant benefit to the market or product in general. This regulation is intended to allow the Commissioner to continue using the rate review process managed by the Division’s actuarial analysts. Thus, in lieu of the more costly actuarial review performed by a certified actuary, the Division’s actuarial analysts will review non-ACA health and dental plans filed under the authority of NRS Chapters 689A, 689B, 689C, 695B, 695C, 695D and 695F.

Given the impact to Nevada consumers, the Division believes it is appropriate and in the best interest of the health insurance market for the Division to continue managing the rate review process for non-ACA health and dental plans.

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

The impact of the this regulation was discussed by the Life and Health Section staff, and it was determined that since the intent of the regulation is to continue the Division of Insurance's practice of performing a rate review for all health and dental plan rate filings that are not subject to the ACA, this regulation would have no impact on Nevada's small businesses. Input from the public will be welcome during the Workshop and Hearing for this proposed 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).

This proposed regulation is intended to continue the Division's practice of performing actuarial reviews by certified actuaries on ACA health benefit plans and dental plans, and to continue to perform rate reviews by Division actuarial analysts on all other types of filed health and dental plan rates. This will ultimately not make any changes to the existing form of regulating Nevada's health and dental plans and will, therefore, have no impact on Nevada's small businesses.

I, BARBARA D. RICHARDSON, Commissioner of Insurance for the State of Nevada, hereby 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 this statement is accurate. (NRS 233B.0608(3))

6/30/2020
(DATE)


BARBARA D. RICHARDSON
Commissioner of Insurance

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

Rate Review of Non-ACA Health Plans Filings

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

No comments were received prior to proposing this regulation, however small businesses will be afforded the opportunity to comment at the workshop and hearing. The language was discussed by the Division of Insurance Life and Health Section, and it was determined that this proposed regulation could not create any new impact on Nevada small businesses.

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).**

The impact of the this regulation was discussed by the Life and Health Section staff, and it was determined that since the intent of the regulation is to continue the Division of Insurance's historical practice of performing a rate review for all health plan rate filings that are not subject to the ACA, this regulation would have no possible impact on Nevada's small businesses. Input from industry will be welcome during the Workshop and Hearing for the proposed regulation.

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

(a) BOTH ADVERSE AND BENEFICIAL EFFECTS.

(1) Adverse: None

(2) Beneficial: None

(b) BOTH DIRECT AND INDIRECT EFFECTS.

(1) Direct: None

(2) Indirect: None

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

No methods were considered to reduce the impact upon small business, as there is no direct or significant impact. This regulation continues the Division's practice of regulation on non-ACA based health and dental plan filings.

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

There will be no increased cost of enforcement, as this maintains the current form of insurance regulation on non-ACA filed health and dental plan rates.

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

DOES THE REGULATION CREATE NEW FEES OR CHANGE EXISTING FEES?

This proposed regulation does not create or change any existing fees.

HOW MUCH WILL BE GENERATED?

N/A

HOW WILL MONEY BE USED?

N/A

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

DOES THE REGULATION DUPLICATE ANY EXISTING FEDERAL, STATE OR LOCAL STANDARDS?

This proposed regulation does not duplicate any existing federal, state, or local standard.

IS IT MORE STRINGENT THAN ANY EXISTING FEDERAL, STATE OR LOCAL STANDARDS?

No, this proposed regulation is not more stringent than any existing federal, state, or local standard.

WHY IS IT NECESSARY?

During the 2019 Nevada Legislature, Senate Bill 86 added language to allow the Commissioner to assess for the actual costs of an outside actuarial review for a rate filing submitted for a health plan. Section 1 of NRS 686B.112 was also modified, adding the language “actuarial review” to apply to the review of all health plan filings.

The ACA requires actuarial reviews of all file rates for ACA health benefit plans for the state to qualify as an Effective Rate Review Program. Division actuarial analysts have the knowledge, training, and competence to conduct rate reviews on rates filed on non-ACA health and dental plans, to meet the statutory requirements of health and dental plan rate filings under NRS 686B.050 and 686B.060. Continuing to perform rate reviews on non-ACA filed health and dental plan will prevent an increase in the costs of these types of plans since a certified actuary is not needed to review the filing.

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

This proposed regulation was discussed by members of the Life and Health Section. Since the regulation is needed to continue the Division’s practice of performing a rate review on non-ACA filed health and dental plans by Division actuarial analysts, there would be no change from existing insurance regulation of these plans. The regulation is needed to provide the Commissioner’s

authority to exempt any requirements of NRS 686B.010 to 686B.1799 if the Commissioner finds their application unnecessary to achieve the purposes of those sections. Keeping the status quo by performing rate reviews benefits the state's insurance consumers and, therefore, there will be no impact on small businesses from the enactment of this regulation.

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

6/30/2020
(DATE)


BARBARA D. RICHARDSON
Commissioner of Insurance

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R127-20

August 10, 2020

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

AUTHORITY: §1, NRS 679B.130, 686B.040 and 686B.112.

A REGULATION relating to insurance; prescribing requirements concerning the review of filed rates for health and dental plans; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires most insurers to file with the Commissioner of Insurance rates, rate increases and certain other information relating to rates. (NRS 686B.070) Existing law requires the Commissioner to perform an actuarial review of and consider each rate filing of certain health or dental plans. (NRS 686B.112) Existing federal regulations require that a state process for reviewing individual or small group health insurance rates must include an examination of certain factors and must meet certain requirements for public disclosure and input in order for the state process to be deemed an Effective Rate Review Program. (45 C.F.R. § 154.301) This regulation requires the actuarial review of rates for a health or dental plan offered for sale on the individual or small group market to meet the requirements prescribed by federal regulations for an Effective Rate Review Program.

Existing law generally authorizes the Commissioner to exempt, by rule, any segment of the insurance market from certain requirements concerning rate filings, including the requirement that health and dental plans must undergo an actuarial review. (NRS 686B.040) Existing law establishes general standards for evaluating the sufficiency of rates for insurance, including requirements that rates not be excessive, inadequate or unfairly discriminatory or have the effect of destroying competition or creating a monopoly. (NRS 686B.050) This regulation: (1) exempts health and dental plans that are not offered for sale on the individual or small group market from the requirement to undergo an actuarial review; and (2) provides that the Commissioner will review the rates of such plans to ensure that the rates meet the general requirements prescribed by state law.

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

1. An actuarial review conducted pursuant to NRS 686B.112 of rates filed for a health or dental plan issued pursuant to the provisions of chapter 689A, 689B, 689C, 695B, 695C, 695D or 695F of NRS that is offered for sale on the individual market or small group market must meet the requirements prescribed by 45 C.F.R. § 154.301 for an Effective Rate Review Program.

2. The Commissioner:

(a) Will not conduct an actuarial review pursuant to NRS 686B.112 of rates filed for a health or dental plan issued pursuant to the provisions of chapter 689A, 689B, 689C, 695B, 695C, 695D or 695F of NRS that is not offered for sale on the individual market or small group market; and

(b) Will review the rates filed for such a health or dental plan to determine compliance with the requirements of NRS 686B.050.

3. As used in this section, the terms “individual market” and “small group market” have the meanings ascribed to them in 45 C.F.R. § 154.102.