

**PROPOSED REGULATION OF THE
BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT INJURY
ACCOUNT FOR SELF-INSURED EMPLOYERS**

LCB FILE NO. R025-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 02/08/2018**

**REVISED PROPOSED REGULATIONS OF THE
BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS**

LCB File No. R122-15

November 15, 2017

Matter in Double Underline, **Red** is new; matter in ~~Strikeout~~, **Blue** is material to be omitted.

AUTHORITY: NRS 616B.551(1) and (2); NRS 616B.554(6); NRS 616B.557(6); NRS 233B.040(1)(4); NRS 233B.100(1); and, NRS 233B.120.

A REGULATION relating to industrial insurance; authorizing reimbursement from the Subsequent Injury Account for Self-Insured Employers for the purchase of an annuity or payment of a lump sum; revising provisions governing the rating of permanent physical impairments; providing for petitions to the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers to adopt, amend or repeal regulations; providing for petitions to the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board; providing procedures for service upon self-insured employers, the Administrator of the Division of Industrial Relations of the Department of Business and Industry and the Board; amending provisions governing requests for continuances; and providing other matters properly relating thereto.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive of this regulation.

Sec. 2.— 1. For ~~the~~ purposes of determining whether a preexisting impairment is a permanent physical impairment:

~~(a) If~~ (a) If the preexisting permanent physical impairment ~~of the employee arose out of and in the course of his or her employment and the~~ is, itself, an industrial injury:

(a) When the injured employee has been assigned a rating of permanent impairment for the preexisting industrial injury which ~~is~~ no longer appealable, the Board may choose to accept the rating for the preexisting ~~impairment~~ industrial injury if ~~the rating~~ it was assigned based on the edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* that was in effect on the date ~~on~~ which ~~when~~ the preexisting ~~impairment was rated;~~ impairment was rated;

~~(b) If a~~ (b) If a industrial injury was rated;

(b) If the preexisting industrial injury has not been rated according to the AMA “Guides” when the application comes before the Board for reimbursement, the Board may decline to rule on the claim for reimbursement ~~from the Subsequent Injury Account for Self-Insured Employers has been submitted to the Administrator pursuant to NAC 616B.7702 but the preexisting impairment has not yet been assigned a rating, the Administrator may choose not to make a recommendation on the claim~~ until a determination has been made concerning the preexisting ~~impairment~~ industrial injury in accordance with the edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* ~~that was~~ in effect on the date ~~on which~~ when the ~~subsequent~~ preexisting industrial injury is rated; and

_____ (c) If ~~a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers~~ an application against the Account has been submitted to the ~~Administrator pursuant to NAC 616B.7702~~ Board and a rating has been assigned to the preexisting ~~impairment~~ industrial injury, but the rating is not deemed final, the ~~Administrator~~ Board may ~~choose not to make a recommendation~~ refrain from ruling on the ~~claim~~ application for reimbursement until the rating has been finalized in accordance with the edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* ~~that is~~ in effect on the date ~~on which~~ when the preexisting ~~impairment~~ industrial injury is rated.

2. _____ The Board and the Administrator are not bound by any agreement between an injured employee and a ~~s~~Self-insured employer concerning:_____

_____ (a) The rating of permanent impairment assigned to a preexisting condition or a subsequent industrial injury;_____

_____ (b) The edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* which should be used to assign a rating of permanent impairment to a preexisting condition or a subsequent industrial injury; or_____

_____ (c) The apportionment of the percentage of disability between the preexisting condition and the subsequent injury.

Sec. 3. ~~A claim~~ application for reimbursement ~~from~~ against the Subsequent Injury Account for Self-Insured Employers submitted pursuant to NAC 616B.7702 must include, without limitation, the name of the person designated ~~by the self-insured employer~~ to accept service on behalf of the ~~selfinsured employer submitting the claim~~ applicant and the address and any facsimile number and electronic mail address at which that person may be served with notices, pleadings and other documents. Except as otherwise provided in section 5 of this regulation, all notices, pleadings and other documents, including, without limitation, any recommendations of the Administrator, must be served on the person designated in the ~~claim pursuant to this section~~ application_____

Sec. 4. ~~_____ 1.~~ —At the time the Administrator determines that an application against the Account is complete and makes a recommendation to the Board regarding a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers, the Administrator shall serve on the person designated in the application for reimbursement pursuant to sections 3 and 5 of this regulation, as applicable, a copy of a copy of the recommendation, a copy of each document and record upon which the Administrator primarily relied to make the recommendation and a list of the witnesses whom the Administrator may call to testify in support of the recommendation.

~~_____ 2. —If the Administrator recommends denying the claim, in whole or in part, in addition to the documents served pursuant to subsection 1, the Administrator shall serve on the person designated pursuant to sections 3 and 5 of this regulation, as applicable, a copy of each document and record upon which the Administrator primarily relied in making the recommendation.~~

Sec. 5. ~~_____ 1.~~ ~~_____~~ A ~~self-insured employer~~ applicant who is represented by legal counsel or a lay advocate shall provide written notice by service on upon the Board and the Administrator, provide notice of the name and business address of the legal counsel or lay advocate, as applicable, and representing the claimant. Notice shall include any facsimile number and electronic mail address at which the legal counsel or lay advocate must may be served with any notices, documents and pleadings and other documents.

2. If a ~~self-insured employer~~ applicant has provided the notice required by subsection 1, the Board and the Administrator will thereafter serve all notices, pleadings and other documents on the legal counsel or lay advocate designated pursuant to subsection 1, as applicable, exclusively above, unless the ~~self-insured employer~~ applicant provides written notice to legal counsel for the Board and the Administrator of a change in representation.

Sec. 6. ~~_____~~ Service on the Board of any filing, pleading, notice or other document required by NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation must be made on the legal counsel designated by for the Board. If the Board has does not designated have legal counsel, service must be made on the Chair of the Board in care of the Administrator for transmission to the Board.

Sec. 7. ~~_____~~ Except for the submission of a ~~claim~~ application for reimbursement ~~from~~ against the Subsequent Injury Account for Self-~~I~~nsured Employers pursuant to NAC 616B.7702, service on the Administrator of any filing, pleading, notice or other document required by NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation must be made on the legal counsel designated by for the Administrator.

Sec. 8. ~~_____ 1.~~ ~~_____~~ Except as otherwise provided by a specific statute or regulation, service of any notice, pleading or other document required by the provisions of NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation must may be hand delivered or made by hand delivery, first-class mail, electronic mail or facsimile.

2. ~~_____~~ Service by hand delivery shall be deemed complete upon the delivery of the

document to the person on whom service is to be made pursuant to sections 3, ~~5~~, 6 and ~~7~~ of this regulation, ~~as applicable~~, by delivery of the document or pleading to a person of suitable age and discretion ~~who has the~~ and with authority to accept service at the business address of the person on whom service is to be made or to a person of suitable age and discretion at the dwelling house or usual place of residence ~~abode~~ of the person upon whom service is to be made ~~pursuant to sections 3 and 5 of this regulation, as applicable.~~

3. Service by first-class mail shall be deemed complete 3 days after the date on which the document is deposited in the United States Postal Service, enclosed in a sealed envelope upon which first class postage was fully paid and correctly addressed ~~and mailed~~ to the business address, dwelling house or usual place of residence ~~abode~~ of the person upon whom service is to be made ~~pursuant to sections 3 and 5 of this regulation, as applicable.~~

4. Service by electronic mail shall be deemed complete upon the successful transmission of the electronic mail to the electronic mail address of:

- (a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation;
- (b) The legal counsel of the Board or the Administrator if service is made pursuant to section 6 of this regulation; or
- (c) The Administrator's legal counsel or the Administrator if service is made pursuant to section 7 of this regulation.

5. Service by facsimile shall be deemed complete upon the successful transmission of the facsimile to the facsimile number of:

- (a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, ~~as applicable~~; or
- (b) The legal counsel of the Board or the Administrator if service is made pursuant to section 6 of this regulation; or
- (c) The Administrator or legal counsel designated by the Administrator, ~~Administrator's legal counsel~~ if service is made pursuant to section 7 of this regulation.

~~5. Service by facsimile shall be deemed complete upon the successful transmission of the facsimile to the facsimile number of:~~

- ~~(a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable;~~
- ~~(b) The legal counsel of the Board or the Administrator if service is made pursuant to~~

~~section 6 of this regulation; or~~

~~(c) The Administrator or legal counsel designated by the Administrator, if service is made pursuant to section 7 of this regulation.~~

Sec. 9.1.

Sec. 9.1. Except as otherwise provided in subsection 2, as used in NRS 616B.557(4), the Board interprets the term "~~written~~written records" to include:

(a) Any written documentation kept ~~by the self-insured employer~~ in the ordinary course of business:

(1) Contemporaneously with the hiring of the injured employee;

~~;~~ or

(2) During the continued employment of the injured employee ~~and~~by the employer but before the date of the subsequent injury.

(b) Any other written documentation if the Board determines that the written documentation constitutes an objective record of the self-insured employer's knowledge of the injured employee's preexisting permanent physical impairment:

(1) At the time the self-insured employer hired the injured employee;

~~;~~

(2) During the continued employment of the injured employee and before the date of the subsequent industrial injury;

~~;~~ or

(3) At any time before the injured employee suffered the subsequent injury for which reimbursement is being requested.

2. An affidavit, letter, self-serving declaration or other document regarding the preexisting impairment which is prepared after the subsequent injury ~~does~~will not satisfy the requirement of proof of the ~~self-insured~~ employer's knowledge that the injured employee suffered from a preexisting permanent physical impairment.

3. ___ To satisfy the requirement set forth in subsection 4 of NRS 616B.557 that the self-insured employer establish by written records that the self-insured employer had knowledge of the preexisting permanent physical impairment of the injured employee, the self-insured employer must establish by a preponderance of the evidence that the contemporaneous written records show that:

(a) The self-insured employer had knowledge of the preexisting permanent physical impairment ~~of the injured employee~~ at the time the injured employee was hired; or

(b) The self-insured employer:

~~(1) Became aware~~ acquired knowledge of the preexisting permanent physical impairment of the injured employee after the employee was hired and before the ~~date~~occurrence of the subsequent industrial injury; and

~~(2) Continued to employ the employee notwithstanding~~ the self-insured ~~employer's knowledge of the preexisting~~employer maintained the injured employee in its employ as of the subsequent industrial injury.

Sec. 10. 1. ~~For the purpose of determining whether a preexisting injury is a permanent physical impairment.~~

~~Sec. 10. 1. For the purposes of subsection 3 of NRS 616B.557, the ratings of permanent impairment ratings of two or more body parts, organ systems or organ functions may not be added together or combined to reach a rating of permanent impairment of six percent or more of the whole person if evaluated according to the AMA "Guides" to qualify a condition as a permanent physical impairment pursuant to NRS 616B.557(3).~~

2. The Administrator shall, and the Board will, use the American Medical Association's *Guides to the Evaluation of Permanent Impairment* ~~as a reference for determining whether a rating of permanent impairment totals 6~~in the determination of whether the preexisting permanent physical impairment would support a rating of six percent or more ~~of the whole person~~ to qualify a condition as a permanent physical impairment pursuant to NRS 616B.557(3). _

3. ~~Multiple body parts unrelated to a subsequent injury, unrelated body parts in the preexisting condition, that are not related to the subsequent industrial injury, will not be considered as one impairment. Each Any~~ body part, organ system or organ function included within a claim for reimbursement from the ~~Subsequent Injury Account for Self-Insured Employers~~ must satisfy the definition of a "permanent physical impairment" ~~to qualify the body part, organ system or organ function for reimbursement under the claim.~~

Sec. 11. 1. ~~before eligibility for reimbursement may be established.~~

Sec. 11. 1. Except as otherwise provided in this subsection 2 or by specific statute or regulation, the Board may authorize reimbursement ~~from the Subsequent Injury Account for Self-Insured Employers for the payment of benefits in the form of a lump sum if:~~

against the Account for the liquidation of benefits by lump-sum payment if:

(a) The applicant meets the requirements of NRS 616B.557;_

(b) The compensation to be paid was due;_

(c) A ~~lump sum~~lump sum payment is reasonable, in the best interest of the injured employee and will eliminate any contingent future liability against

the ~~Subsequent Injury Account for Self-Insured Employers; and~~

~~(d) A lump-sum payment:~~

~~(1) If the payment is~~ Account; and

(d) The lump sum payment:

(1) Meets the requirements of NRS 616C.495, if being made for a permanent partial disability, ~~m,~~ or

(2) Meets the requirements of NRS 616C.495; ~~590~~ or

~~(2) If the payment 616C.595, is~~ if being made for vocational rehabilitation services, ~~meets the requirements of NRS 616C.590 or 616C.595.~~

2. ~~_____ The Board will not authorize reimbursement from the Subsequent Injury Account for Self-Insured Employers for:~~

~~(a) Any payment~~ Account for:

(a) Any transaction that is prohibited by NRS 616C.410; or

(b) A lump-sum payment that was not made to an injured employee.

3. _____ In considering whether to authorize reimbursement from the Subsequent Injury Account for Self-Insured Employers for the payment of benefits in the form of a lump sum Account for the liquidation of benefits by lump sum payment pursuant to this section, the Board may consider any information that it deems relevant, including, without limitation, the application of any statute or regulation.

Sec. 12. ~~_____ 1. _____ A self-insured employer who purchases an annuity to ensure the payment of a claim that is filed with the self-insured employer pursuant to chapters 616A to 617, inclusive, of NRS may submit a claim~~ satisfy, in whole or in part, a claim for a subsequent industrial injury approved by the Board may submit an application for reimbursement from the Subsequent Injury Account for Self-Insured Employers in accordance with NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation.

~~_____ 2. _____ The~~ the purchase of the annuity for the benefit of the injured employee.

2. _____ If the Board approves reimbursement for the cost of the annuity pursuant to subsection 1, the self-insured employer may submit, as provided in subsection 3, a claim for reimbursement for the amount of compensation that the annuity paid to may be reimbursed from the Account for compensation received by the injured employee for whom from the annuity was purchased.

~~_____ 3. _____ The self-insured employer may submit a claim for reimbursement,~~ not to exceed

the cost of the annuity.

3. Reimbursement may be sought annually on the anniversary date of the purchase of the annuity, or more frequently with good cause shown, but the aggregate amount of reimbursement paid to the self-insured employer must not, at any time, exceed the compensation paid to the injured worker.

4. The Board will not approve or pay a claim for reimbursement for an annuity submitted pursuant to this section for:

(a) ~~Any amounts which, in combination with previous reimbursements, exceed the lesser of:~~

~~(1) The price of the annuity; and~~

~~(2) The aggregate amount of compensation that the annuity has paid to the injured employee; exceed the cost the annuity.~~

(b) Attorney's fees relating to the purchase of the annuity; or

(c) Any administrative expenses or other expenses relating to the purchase of the annuity, including, without limitation, expenses for the copying of records.

5. As used in this section, "good cause" includes, without limitation, a financial exigency or extraordinary circumstance.

Sec. 13. ~~1. A petition may be filed with the Board requesting that the Board adopt, amend or repeal a regulation governing the administration of the Subsequent Injury Account for Self-Insured Employers must include, without limitation:~~

~~Account by the Board.~~

2. The petition filed with the Board pursuant to this section must include:

(a) The name and mailing address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, amended or repealed;

(c) The reason for the adoption, amendment or repeal of the regulation; and

(d) The ~~statutory~~ legal authority for the adoption, amendment or repeal of the regulation.

~~2. A petition requesting the adoption, amendment or repeal of a regulation as described in this section may~~ 3. The original petition and five copies must be filed with the

Board and, within 5 days after filing with the Board, ~~with the Administrator, electronically. If such a petition is not filed electronically, the person filing the petition shall file an original and seven copies of the petition and any supporting documentation with the Board and, within 5 days after filing with the Board,~~ the petitioner shall serve one copy on the Administrator; by ~~p~~_____

(a) ~~Personal service, f~~_____

(b) ~~Registered mail or certified mail, return receipt requested; or~~_____

(c) ~~Any electronic means permitted by these regulations.~~_____

~~34.~~_____ The Board may decline to take action on ~~and return to the petitioner a~~ petition which does not ~~contain the information required by subsection 1 or was not filed pursuant to subsection 2.~~

~~4~~_____ satisfy the requirements of subsection 3, above.

~~5.~~_____ Except as otherwise provided in subsection ~~34~~, the Board will hold a hearing to consider a petition ~~and notify the petitioner in writing of its decision within 30~~ filed with the Board pursuant to subsection 3 of this regulation not later than 45 days after the petition is filed ~~with the Board.~~ The Administrator may file with the Board a recommendation concerning ~~the~~ disposition of the petition not later than 15 days before the date of the hearing and shall, upon filing such a recommendation ~~with the Board,~~ ~~provide~~ serve a copy ~~to~~ of the recommendation on the petitioner.

~~56.~~_____ A person, other than ~~an~~ the original ~~party to a hearing to consider a~~ petitioner, who believes that he or she may be directly and substantially affected by the hearing ~~and who wishes to participate in the hearing must secure an order from the Board granting the person~~ may seek leave to intervene ~~in the hearing~~ by filing with the Board a written motion to intervene. Such a motion must set forth the legal and factual basis in support of ~~the person's standing to intervene and for the person's~~ standing to file the motion to intervene. The motion shall also set forth separately the legal and factual basis of the person's position in favor of or opposition to the petition ~~and~~. The motion must be filed with the Board, and served on the Administrator not later than 20 days before the ~~hearing. If the Board grants such a motion~~ date of the hearing by:_____

(a) ~~Personal service;~~_____

(b) ~~Registered mail or certified mail, return receipt requested; or~~_____

(c) ~~Any electronic means permitted by these regulations.~~_____

~~7.~~_____ If the motion to intervene is ~~granted~~, the Board will enter an order allowing the person to participate as a party to the proceedings and ~~the Board will~~ take into consideration the intervenor's position ~~of the person~~ on the merits of the petition ~~filed pursuant to subsection 6.~~

~~68.~~_____ In conducting a hearing ~~to consider a~~ on the petition ~~to alter, amend or repeal a regulation~~, the Board is not bound by the technical rules of evidence, and any informality in ~~a~~ the

proceeding or in the manner of taking testimony does not invalidate any order, decision, ruling or regulation made, approved or confirmed by the Board. The rules of civil procedure and evidence of the courts of this State will be followed generally, but may be relaxed at the discretion of the Board if deviation from these technical rules of evidence will aid in determining the facts. _

~~7. — After the hearing~~^{9.} Within 45 days after the close of the final hearing on the merits of the petition, the Board will ~~provide~~^{serve} written notice of its decision ~~to~~^{on} the petitioner, the Administrator and any intervenor. ~~Such a~~ The notice of decision will include a brief statement of the Board's decision and the reasons supporting the decision. _

10. If the Board grants the petition to adopt, amend or repeal a regulation, the Board will initiate ~~appropriate regulation-making proceedings~~^{regulation making procedures}. _

811. — A decision of the Board to grant or deny a petition pursuant to this section is a final decision for the purpose of judicial review. _

Sec. 14. 1. Except as otherwise provided in subsection ~~104~~, any interested person may petition the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board. ~~Such a~~

2. A petition filed with the Board pursuant to this section must include, ~~without limitation:~~

- (a) The name and mailing address of the petitioner; _
- (b) The reason for the petition and a statement of the facts and law supporting the petition; and _
- (c) A clear and concise statement of the question to be decided by the Board and the relief sought by the petitioner. _

~~2. — A petition for the issuance of a declaratory order or advisory opinion as described in this section may~~^{3.} The original petition and five copies of the decision must be filed with the Board and, within 5 days after filing with the Board, ~~with the Administrator, electronically. If such a petition is not filed electronically, the person filing the petition shall file an original and seven copies of the petition and any supporting documentation with the Board and, within 5 days after filing with the Board,~~^{the petitioner} shall serve one copy on the Administrator. Filing and service shall be by ~~p~~:

- (a) Personal service, ~~r~~ _
- (b) Registered mail or certified mail, return receipt requested, ~~or~~ _
- (c) Any electronic means permitted by these regulations.

34. The Board may refuse to consider a petition which does not contain the

information required by subsection 42 or was not filed and served pursuant to subsection 23.

45. The Administrator may file with the Board a response concerning the disposition of the petition not later than 45 days after service of the petition upon the Administrator and shall, within 5 days after filing such a response, provide a copy to the petitioner.

5. serve one copy of the Administrator's responses of the petition by:

(a) Personal service;

(b) Registered mail or certified mail, return receipt requested; or

(c) Any electronic means permitted by these regulations.

6. After providing written notice to the petitioner and the Administrator, the Board may:

(a) Conduct an informal hearing to determine any preliminary matters that may expedite the disposition of the petition and issue reasonable orders that govern the conduct of a hearing on the merits of the petition.

(b) Request that the petitioner submit additional information or arguments concerning the petition and allow the Administrator to file a response to any such additional information or arguments and, upon filing of such a response or at such other time as the Board may prescribe, provide a copy to the petitioner.

(c) Consider relevant decisions that have been issued by the Board which apply or interpret the statute, regulation or decision in question.

(d) Enter any reasonable order to assist in the review of the petition.

67. The Board may conduct a formal hearing on a petition or render without a hearing a decision on the petition based on the information submitted to the Board. The Board will notify the petitioner and the Administrator when it determines that it has received sufficient information to determine how to proceed with the petition and, within 10 days thereafter, provide serve notice of fn the date of the formal hearing or Administrator and petitioner that the petition will be decided without a formal hearing or serve on the Administrator and petitioner a 45 day notice of the date of the formal hearing.

78. The decision of the Board must be based upon and limited to the information provided to the Board pursuant to this section.

89.- Within 45 days after the date that the formal hearing is concluded or the date that the Board gives notice that the petition will be decided without a formal hearing, the Board will issue a written declaratory order or advisory opinion disposing of the petition and mail a copy of the declaratory order or advisory opinion to the petitioner and the Administrator.

910. The Board will maintain a record that is indexed by subject matter of each declaratory order or advisory opinion issued by the Board.

101. A person may not petition the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board if the applicability of the statute, regulation or decision of the Board is at issue in any administrative, civil or criminal proceeding in which the person is a party.

112. A decision of the Board relating to a petition filed pursuant to this section is a final decision for the purpose of judicial review.

Sec. 15. NAC 616B.770 is hereby amended to read as follows:

616B.770 As used in NAC 616B.770 to 616B.7714, inclusive, **and sections 2 to 14, inclusive, of this regulation**, unless the context otherwise requires, “Board” has the meaning ascribed to it in NRS 616B.545.

Sec. 16. NAC 616B.7702 is hereby amended to read as follows:

616B.7702 ~~1. A claim~~ 1. The Board will approve or disapprove, in whole or in part:

(a) ~~Each application made for reimbursement from the Subsequent Injury Account for Self-Insured Employers established pursuant to NRS 616B.554 must be submitted in writing for evaluation by the Board. To submit a claim pursuant to this subsection, the claim must be served, in writing, against the Account by a self-insured employer, if the application is completed by the self-insured employer pursuant to the requirements set forth in this section; and~~

(b) ~~Any expenses of the self-insured employer, related to each such application, that the Administrator has verified pursuant to the provisions of NAC 616B.707.~~

2. For an application to be approved in whole or in part, the applicant must prove by a preponderance of the evidence that all of the criterion for either NRS 616B.557 or NRS 616B.560 have been satisfied.

3. To submit an application to the Board, a self-insured employer must:

(a) ~~Serve the application in writing on the Administrator.~~

~~2. A self-insured employer who submits a claim pursuant to subsection 1 shall include:~~

(b) ~~Include with the claim:~~

- ~~(a) The information necessary to establish that the claim should be paid from the Subsequent Injury Account for Self-Insured Employers, including the medical records of the employee who is the subject of the claim; and~~
- ~~(b) A completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist" which is prescribed by the Administrator. A copy of the form;~~
- ~~(c) Organize the application in the manner prescribed in Form D-37 and number each of the pages in the claim sequentially; and~~
- ~~(d) Include with the claim all information which is necessary to establish that the application should be paid from the Account. Such information must include, without limitation, the pertinent medical records of the injured employee who is the subject of the application.~~

~~4. A copy of Form D-37 may be obtained from the Administrator or on the Internet website maintained by the Administrator at no cost.~~

~~3. A claim submitted to the Administrator pursuant to subsection 1 must be organized in the manner prescribed in part 5 of Form D-37, Insurer's Subsequent Injury Checklist.~~

~~45. A self-insured employer who that submits a claim application pursuant to subsection 13 shall, upon the request of the Administrator, provide copies of the records maintained by the self-insured employer concerning the claim application to the Administrator.~~

~~56. Upon the request of the Administrator, a self-insured employer that serves an application for reimbursement on the Administrator shall:~~

- ~~(a) Allow the Administrator to inspect any records related to the self-insured's application that are maintained by the self-insured employer; or~~
- ~~(b) Provide copies of those records to the Administrator.~~

~~7. The Administrator may refuse to process a claim that is incomplete or does not conform to the requirements of Form D-37, Insurer's Subsequent Injury Checklist. The Board will not deem a claim to be complete as a result of the claim being processed by the Administrator.~~

~~68. This section does not prohibit or limit the Administrator from requiring or obtaining from the self-insured employer, the employer or any other person any additional information relating to a claim submitted pursuant to subsection 1.~~

~~Sec. 17. the application.~~

~~9. The Administrator's disposition of the application and recommendation to the Board is neither an express nor implied representation by the Administrator that the claimant's application is complete. Responsibility for the completion or accuracy of an application always~~

rests with the applicant.

Sec. 17. NAC 616B.7704 is hereby amended to read as follows: _

~~_____~~ NAC 616B.7704

~~—~~ 1. ~~_____~~ Not later than 60 days after the date ~~on which a claim~~ that an application is served on the Administrator pursuant to NAC 616B.7702, the Administrator shall:

(a) Submit to the Board a recommendation concerning the ~~acceptance or denial of:~~

~~_____~~ (1) ~~The claim; and~~

~~_____~~ (2) ~~The self-insured employer's expenses~~ approval or disapproval in whole or in part of:

(1) The application; and

~~_____~~ (2) ~~Any expenses of the self-insured employer related to the claim; and~~ application that the Administrator has verified pursuant to the provisions of NAC 616B.707; and

(b) Notify the self-insured employer ~~who~~ that submitted the claim or the person designated to accept service on behalf of the self-insured employer of ~~that~~ the Administrator's recommendation to the Board.

2. ~~_____~~ The Administrator shall include with the recommendation the information necessary for the Board to evaluate the ~~claim~~ application and the expenses related to the ~~claim~~ application, including, without limitation:

(a) A statement of the issues of fact and law upon which the recommendation of the ~~_____~~ Administrator is based;

(b) A copy of each document upon which the Administrator based ~~his or her~~ the recommendation; and

(c) A list of ~~the~~ each witnesses, if any, whom the Administrator would ~~intend to~~ likely call before the Board to support ~~his or her~~ the recommendation, if contested.

3. Upon receipt of the recommendation of the Administrator, the Board will render a decision disposing of: _

~~_____~~ (a) The ~~claim~~ application; and _

~~_____~~ (b) The self-insured employer's expenses related to the ~~claim~~ application which have been verified by the Administrator after consideration in accordance with the provisions of NAC 616B.707.

Sec. 18.— NAC 616B.7706 is hereby amended to read as follows:—

616B.7706 1. If the Board initially denies a ~~claim~~ application for reimbursement or any of the expenses related to the claim application, the self-insured employer who submitted the claim application may request a hearing before the Board by filing a written request with the Board's legal counsel within 30 days after the Board's legal counsel notifies the self-insured employer of the decision of the Board.

~~2. The~~

2. If the self-insured employer timely requests a hearing before the Board pursuant to subsection 1, the Board will conduct the hearing within not later than 45 days after the request for a hearing is filed with the Board's legal counsel unless the Board grants a continuance. The Board may grant a continuance upon its own motion or, pursuant to subsection 6, upon the request of the Administrator or the self-insured employer who submitted the claim.

3. The Board will conduct the hearing pursuant to the provisions of Chapter 233B of NRS ~~that~~ the Nevada Revised Statutes which relate to contested cases and, if practicable, the Board will apply the rules of procedure and evidence that apply applicable to the District eCourts of this State.

4. Any objection to the conduct of the hearing, including, without limitation, an objection to the introduction of evidence, must be addressed to the Chair of the Board who, in consultation with the other members of the Board and the legal counsel of the Board, will rule upon the objection. If any evidence is excluded from the record, the party who is offering the evidence may make an offer of proof to the Chair of the Board. Such an offer of proof must be included in the record.

5. The Board will direct that an audio recording of the hearing be made, unless ~~t~~

(a) The Board, on its own ~~motion~~, requires that a court reporter record the hearing; or ~~t~~

(b) The self-insured employer requests in advance that the Board provide a court reporter for the hearing and the Board approves the request. If the Board provides a court reporter for the hearing upon the request of the self-insured employer, the self-insured employer shall pay all costs related to the services of the court reporter and all costs that are necessary to provide the Board with a copy of the transcript of the hearing.

6. A request for a continuance by the Administrator or a self-insured employer must:

(a) Be in writing;

(b) State the reasons supporting the request;

- (c) Include a statement of any extensions of time or continuances previously granted;
- (d) Not be made for the reason of delay and include a statement to that effect;
- (e) Be filed by service upon the Board not later than 3 days before the date of the hearing unless extraordinary circumstances are shown or the Board finds that excusable neglect exists; and
- (f) Be served upon each other party to the hearing upon filing with the Board.

7. A rebuttable presumption arises that the self-insured employer has given the Administrator all the information which the self-insured employer believes is necessary to support the claim and that the self-insured employer believes the claim is ready for disposition by the Board arises if:

~~(a)~~ A the request for a continuance ~~has been~~ was filed with the Board pursuant to subsection 6 after;

~~(b)~~ a The self-insured employer has submitted a claim for reimbursement to the Administrator;

~~(c)~~ b The Administrator has completed a review of the claim and related information; and

~~(d)~~ c The Administrator has made a recommendation regarding the claim to the Board.

8. After the hearing, the Board will render a decision disposing of the claim application based upon the record developed before the Board during the hearing and any continuation thereof.

9. ___ If the Board denies a claim application for reimbursement in whole or in part, the Board may direct the legal counsel of the Board to prepare a written decision for the Board that includes findings of fact and conclusions of law for the decision. ~~If the Board directs the legal counsel of the Board to prepare a written decision, the~~ l legal counsel shall submit the written decision to the Board for approval. ___ If the Board approves the written decision, the Chair of the Board will sign the decision as the decision of the Board and the Board will serve its decision on the self-insured employer.

10. ___ A If the applicant is dissatisfied with the decision of the Board ~~pursuant to this section is a final decision for~~, the purpose of applicant may seek judicial review of the decision in the District Court not later than 30 days after service of the decision upon the applicant.

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