

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066

The following informational statement as required by NRS 233B.066 is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 618 as follows:

1. EXPLANATION OF THE NEED FOR THE ADOPTED REGULATION

The proposed regulations, LCB File No. R032-21, are needed to update and bring current the titles of certain forms utilized by the Division of Industrial Relations relative to workers' compensation claims and as stated in Nevada Administrative Code ("NAC") Chapters 616A through 616D. *See* Section 2 of LCB File No. R032-21. The regulations further include updates to the addresses of the Division, as well as includes updates to references from "chiropractors" to "chiropractic physicians", to comport with AB 210 (2021). Further, the regulation repeals NAC 616C.490, as it was repealed pursuant to SB 289 (2021).

To that end, the proposed regulations relate to industrial insurance; revise provisions governing certain posters, forms and data related to claims for workers' compensation and claims for occupational diseases; extend certain duties to physician assistants and advanced practice registered nurses who initially examine injured employees or file claims for compensation; revise the items relating to a claim which must be maintained by an insurer or third-party administrator; require an insurer or third-party administrator to provide a copy of a notice of denial of a claim to certain health care providers who provided the initial examination and treatment to an injured employee; revise requirements for insurers' notifications of certain rights reserved by certain injured employees; and repeal certain provisions.

2. DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, A SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

Copies of the proposed regulation, notices of workshop, and notice of intent to act upon the regulation were sent by e-mail and U.S. Mail to persons who were known to have an interest as well as any persons who had specifically requested such notice, if any. These documents were also made available at the Division's website, <http://dir.nv.gov/Meetings/Meetings>, with the notices also posted at the following locations:

The State of Nevada Website (www.notice.nv.gov)

The Nevada State Legislature Website (<http://leg.state.nv.us/App/Notice/A/>)

The Division of Industrial Relations Website (<http://dir.nv.gov/Meetings/Meetings>)

A Workshop was held to solicit comments on the proposed regulation on June 20, 2022. At the conclusion of the June 20, 2022 Workshop, the Division invited members of the public wishing to submit written public comment. After the June 20, 2022 Workshop, the Division received written public comment on the then-proposed version of R032-21 from Herb Santos, Jr., Esq., on behalf of the Workers' Compensation Section of the Nevada Justice Association, which

stated that SB 289 resulted in the repeal of NAC 616C.490 and that the statute was clear and concise as to apportionment and did not require regulations to further clarify or explain its meaning. Mr. Santos stated that the proposed regulation would result in ambiguity, which would lead to unnecessary litigation, and instead, the proposed regulation disregards the clear and concise language of the statute.

After receiving the public comments from the June 20, 2022 Workshop as well as the written public comments, the Division modified R032-21 to address the concerns raised, including regarding NAC 616C.490, and proposed the updated language at the adoption hearings held on November 10, 2022 and March 21, 2023.

The Division held its first Public Adoption Hearing on November 10, 2022. The Division held a second Public Adoption Hearing on March 21, 2023, to solicit comments from the public on the adoption of the regulation. Relative to the March 21, 2023 Adoption Hearing, the Division received the following written public comment:

1. Susan Priestman, PT, DPT – President of APTA NV – Physical therapists and physical therapy assistants have an integral role to play in the workers’ compensation population, due to their evidence-based expertise in musculoskeletal rehabilitation, concussion management, workplace ergonomic, and in-non-pharmacological pain management. The practice of physical therapy is severely underutilized in the industrial rehabilitation realm. Physical therapists should be included in the definition of “healthcare provider”, as doing so would realize significant cost savings to the workers’ compensation system and employers. Expanding the definition of healthcare provider would also provide expanded access to care for injured workers.
2. Steven A. Bennett – American Property Casualty Insurance Association (APCIA) – APCIA in general supports the proposed amendments and thanks the Division for their efforts in updating the workers’ compensation rules. However, it has a concern with the language of NAC 616C.088, as it requires that an insurer’s claim file must contain notice whether a written determination made by an insurer, third-party administrator, or an organization for managed care concerning a claim was sent and served by electronic transmission, proof of a successful transmission of that determination and receipt thereof by the injured employee or any person acting on his or her behalf. APCIA is concerned with the phrase “or any person acting on the injured employee’s behalf” because it is a difficult standard creating confusion and ambiguity. APCIA requests that the phrase “any person acting on his or her behalf” be removed.
3. Dalton Hooks – Mr. Hooks requested that Section 7 be revised to include the phrase “or the facility where such examination and treatment were given”.

A summary may be obtained by contacting Rosalind Jenkins, Legal Secretary II, Division of Industrial Relations, (702) 486-9014, or by writing to the Division of Industrial Relations, 3360 W. Sahara Ave., Ste. 250, Las Vegas, Nevada 89102.

3. THE NUMBER OF PERSONS WHO:

- a. ATTENDED JUNE 20, 2022 WORKSHOP:

13

- b. ATTENDED NOVEMBER 10, 2022, PUBLIC HEARING: 20
- c. ATTENDED MARCH 21, 2023 PUBLIC HEARING: 28
- d. TESTIFIED AT JUNE 20, 2022 WORKSHOP: 1
- e. TESTIFIED AT NOVEMBER 10, 2022 PUBLIC HEARING: 4
- f. TESTIFIED AT MARCH 21, 2023, PUBLIC HEARING: 2
- g. SUBMITTED WRITTEN COMMENTS RELATED TO JUNE 20, 2022 WORKSHOP: 1
- h. SUBMITTED WRITTEN COMMENTS RELATED TO NOVEMBER 10, 2022, WORKSHOP: 0
- i. SUBMITTED WRITTEN COMMENTS RELATED TO MARCH 21, 2023 PUBLIC HEARING: 3

4. FOR EACH PERSON IDENTIFIED IN PARAGRAPHS (d), (e), and (f) OF NUMBER 3 ABOVE, THE FOLLOWING INFORMATION, IF PROVIDED TO THE AGENCY CONDUCTING THE HEARING:

June 20, 2022 Workshop	
1	<p>Name: Herb Santos, Jr.</p> <p>Telephone number: None received</p> <p>Business address: None received</p> <p>Business telephone number: None received</p> <p>Electronic mail address: None received</p> <p>Name or organization represented: Workers' Compensation Section of the Nevada Justice Association</p> <p>Summary of comment: The issue regarding apportionment, is when you go to paragraph 3, and lists what is in the statute, the first thing is that the regulation is not necessary – the regulations are supposed to add clarification, but yet we are copying those things that are already in statute. That creates redundancy and makes it vague and ambiguous.</p> <p>When looking at Section 3, the Division has taken out certain things but added diagnoses and measurements – what you have done is that you have duplicated NRS 616C.490(3). However, when you look at Section 3, that has to be done, those records are done to rely under Section 2. When you look at the regulation, the introductory language, that is where the ambiguity comes in – there are more specific requirements set forth in Section 2.</p>

November 10, 2022 Public Hearing	
1	<p>Name: Dalton Hooks</p> <p>Telephone number: None received</p> <p>Business address: None received</p> <p>Business telephone number: None received</p> <p>Electronic mail address: None received</p> <p>Name or organization represented: Nevada Self-Insurers Association</p> <p>Summary of comment: On Section 2 - page 6 of the proposed regulation, regarding C-4 Forms (sub paragraph (f)(1), it requires employers to obtain original signatures,</p>

	<p>but that is not required by SB 289, but step to obtain wet signatures obviates purpose of making this electronic. Asked the Division to reconsider this language.</p> <p>With regards to Section 12, on page 24, regarding NAC 616C.499 subparagraph 3, striking the phrase “including right to appeal” is inconsistent with NRS 616C.495(2) “by so accepting the claimant waives all of his/her rights”. Language should not be added to the code. Also has concerns with page 21 of the regulation where Division struck language. The language in Section 12 is redundant and creates potential for unnecessary future updates to bring code in line with statute.</p> <p>With regards to Section 17, repeal of NAC 616C.505, there may be general confusion and removing this section will add to confusion. There are questions of when installment payments are due (SB 289); NRS 616C.490(11). The fundamental problem with the Division’s repeal of the language regarding enforcing installments is in case of dispute, but in the absence of dispute, insurer/third-party administrators are without guidance as to when to start installments. Per NAC 616C.103, it is 20 days after sending offer to employee, but problem there is per the code, it is only triggered after the TPA properly receives request for installments. There will be confusion from insurers/TPAs who are trying to comply with the code in a non-dispute scenario. Mr. Hooks encouraged the Division to look at NAC 616C.103 and take notice of conditions precedent as to when installments must begin – what is the trigger?</p>
2	<p>Name: Lisa Bickford Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: Coventry Summary of comment: Agrees with comments made by Mr. Dalton Hooks regarding Section 2 of regulation regarding C-4 Form – wet signatures undermine telemedicine. They are not required in any other state, and is especially true in rural areas.</p>
3	<p>Name: Craig Coziahr Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: ProGroup Management Summary of comment: Agrees with comments made by Mr. Dalton Hooks regarding Section 2 of regulation regarding C-4 Form.</p>
4	<p>Name: Wayne Carlson Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: None received</p>

Summary of comment: As to Section 14(2)(b), “fireman” should be “firefighter” for consistency.

March 21, 2023, Public Hearing

1	<p>Name: Susan Priestman Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name or organization represented: President of APTA (American Physical Therapy Association, Nevada Section) Summary of comment: Physical Therapists and Physical Therapist Assistants have an integral role to play in the workers’ compensation population due to evidence-based expertise in musculoskeletal rehabilitation, concussion management, workplace ergonomics and in non-pharmacological pain management. Additionally, PTs have been the recognized experts in measuring work capacity to contribute to best return to work placements and case closure. Practice of PT is severely underutilized in the industrial rehabilitation realm. PTs should be included in the definition of Healthcare Provider. Doing so would realize significant cost savings to the workers’ compensations system and employers through the reduction in case severity, prevention of unnecessary imaging, emergency room use and opioid utilization. When patients see a PTs first, downstream costs have been shown to be markedly reduced as opposed to the patient seeing a physician first. Expanding the definition of Healthcare Provider would also provide expanded access to care for injured workers in the state of Nevada. PTs are movement experts and are uniquely qualified not just to evaluate, but also treat musculoskeletal injuries. There are 2600 PTs licensed in the state of Nevada. PTs could further bolster the ranks of other primary care practitioners to expand accessibility to injured workers. Expressed her comments most aptly pertain to Section 5 of the proposed regulation in terms of adding physical therapists to the term “health care provider”.</p>
2	<p>Name: Dalton Hooks Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: Nevada Self-Insured Associations and its Members Summary of comment: As to Section 2, what Section 2 does is change the names of the D10(a) and (b). Remain concerned – change is more than meets the eye. Without election by the Claimant, nothing shows when installment payments should start.</p>

With regards to Section 7, there is a concern there are a number of facilities in which the physicians are numerous and not always there. The proposal to chasing a doctor is to add language that either puts this notice to go to the facility where the treatment was had, or to add “or facility”.

With regards to Section 8, he reiterated his objections are the same as to Section 2 – renaming the D-10(a) and (b) forms.

With regards to Section 17, it repeals NAC 616C.505. Not sure if this provision is dealt with elsewhere, but believes this should remain.

5. DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

On April 13, 2022, the Division sent out a Small Business Impact Statement Questionnaire to interested parties on the Division’s Listserv at WCSEEDUCATION@LISTSERV.STATE.NV.US, which includes over 17,000 business. The Questionnaire inquired from small businesses whether they believed there would be any economic effects, adverse or beneficial, direct or indirect, on their respective businesses from the proposed regulation. The Division also placed a link on its website to the questionnaire for interested parties to complete, should they so choose. The deadline to return the questionnaire was April 29, 2022. The Division received three (3) responses as follows:

1. Michael Frew, Graphite Solutions, LLC d/b/a Appointment Reminder – He did not believe that the regulation would have an adverse or beneficial economic effect on his business. However, he stated, “Increased regulation never has any benefits for small business. Please stop adding more paperwork to already overburdened industries.”
2. Any Nevada Business – It believed that the regulation would have an adverse economic effect on the business with no beneficial effects.
3. Jackie Cox, SpecialtyHealth, Inc. – The regulation would not have an adverse or beneficial economic effect on her business.

Further, the Division held a Workshop on June 20, 2022, as well as public hearings on November 10, 2022 and March 21, 2023. Copies of the proposed regulation, notices of workshop, and notice of intent to act upon the regulation were sent by e-mail and U.S. Mail to persons who were known to have an interest as well as any persons who had specifically requested such notice, if any. These documents were also made available at the Division’s website, <http://dir.nv.gov/Meetings/Meetings>, with the notices also posted at the following locations:

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The Division of Industrial Relations Website (<http://dir.nv.gov/Meetings/Meetings>)

Members of the public were invited to provide public comment on the proposed regulations at the workshop and public hearings, and in fact, several members of the public provided comments thereat. Please see answer to No. 2, *supra*.

A summary may be obtained by contacting Rosalind Jenkins, Legal Secretary II, Division of Industrial Relations, (702) 486-9014, or by writing to the Division of Industrial Relations, 3360 W. Sahara Ave., Ste. 250, Las Vegas, Nevada 89102.

6. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.

Comments received at the public workshops and public hearing were considered and incorporated in the revised proposed regulation adopted by the Division. The concerns from public comment were received in advance in writing and considered.

The Division believes that the regulations, as adopted, were amended and adopted such that concerns raised by stakeholders have been addressed as much as possible.

7. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:

A. ADVERSE AND BENEFICIAL EFFECTS

i. Effect on Businesses

The Division anticipates no adverse effects, either direct or indirect, on regulated businesses as the result of these regulations. The adverse effects, if any, are difficult to determine at this time. There will be no direct or indirect cost to regulated businesses.

The Division believes that there will be no beneficial effects, either direct or indirect, on regulated businesses as the result of these regulations.

ii. Effect on the Public

The Division anticipates no adverse effects, either direct or indirect, on the public as the result of these regulations. There will be no direct or indirect cost to the public.

The Division believes that there will be no beneficial effects, either direct or indirect, on the public as the result of these regulations.

B. IMMEDIATE AND LONG-TERM EFFECTS

i. Effect on Businesses

The Division does not anticipate any immediate effects, either adverse or beneficial, on regulated businesses as a result of these regulations. There will be no direct or indirect costs to regulated businesses.

The Division does not anticipate any long-term effects, either adverse or beneficial, on regulated businesses as a result of these regulations. There will be no direct or indirect costs to the regulated businesses.

ii. Effect on the Public

The Division does not anticipate any immediate effects, either immediate or long-term, on the public as a result of these regulations. There will be no direct or indirect costs to the public.

8. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION

There will be no additional or special costs incurred by the Division for enforcement of this regulation.

9. DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATIONS OVERLAPS OR DUPLICATES AND A STATEMENT EXPLAINING WHY THE DUPLICATION OR OVERLAPPING IS NECESSARY. IF THE REGULATION OVERLAPS OR DUPLICATES A FEDERAL REGULATION, THE NAME OF THE REGULATING FEDERAL AGENCY.

The Division is not aware of any similar regulations of other state or government agencies that which the proposed regulations overlap or duplicate.

10. IF THE REGULATION INCLUDES PROVISIONS WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISIONS.

The Division is not aware of any similar federal regulations of the same activity in which the adopted regulations are more stringent.

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11. **IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.**

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

Dated this 17th day of April, 2023.

DIVISION OF INDUSTRIAL RELATIONS

By: Victoria Carreón

Victoria Carreón
Administrator, Division of Industrial Relations
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Las Vegas, Nevada 89102