PROPOSED REGULATION OF THE

DIVISION OF INDUSTRIAL RELATIONS OF THE DEPARTMENT

OF BUSINESS AND INDUSTRY

LCB FILE NO. R028-23I

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PROPOSED REGULATION OF THE

DIVISION OF INDUSTRIAL RELATIONS OF

THE

DEPARTMENT OF BUSINESS AND

INDUSTRY LCB File No.

Unassigned

July ___, 2023

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

AUTHORITY: §§ NRS 616A.400; 616A.417; 616B.5273; 616C.110; 616C.245; 616C.365; 616C.420; 616C.450; 616C.477; 616C.485.

A REGULATION relating to industrial insurance;

Legislative Counsel's Digest:

Section 1. NAC 616A.050 and NAC 616A.170 are hereby repealed.

Sec. 2. NAC 616B.016 is hereby repealed.

Sec. 3. NAC 616B.7702 is hereby amended to read as follows:

NAC 616B.7702 Submission of claim. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

1. The Board will approve or disapprove, in whole or in part:

(a) Each claim made for reimbursement from the Subsequent Injury Account for Self-Insured Employers established pursuant to NRS 616B.554 by a self-insured employer, if the claim is completed by the employer pursuant to the requirements set forth in this section; and

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

2. To submit a claim to the Board, a self-insured employer must:

(a) Serve the claim, in writing, on the Administrator;

(b) Include with the claim a completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist" that is prescribed by the Administrator;

(c) Organize the claim in the manner prescribed in Form D-37; and

(d) Include with the claim all information which is necessary to establish that the claim should be paid from the Subsequent Injury Account for Self-Insured Employers. Such information must include, without limitation, the pertinent medical records of the injured employee who is the subject of the claim.

~~[3. A copy of Form D-37 may be obtained from the Administrator or on the Internet website maintained by the Administrator at no cost.]~~

~~[4.]~~ ***3.*** A self-insured employer who submits a claim pursuant to subsection 2 shall, upon the request of the Administrator:

(a) Allow the Administrator to inspect the records maintained by the self-insured employer concerning the claim; or

(b) Provide copies of those records to the Administrator.

~~[5.]~~ ***4.*** This section does not prohibit or limit the Administrator from requiring or obtaining from the self-insured employer or any other person any additional information relating to a claim submitted pursuant to subsection 2.

Sec. 4. NAC 616D.413 is hereby amended to read as follows:

NAC 616D.413 Determination of pattern of untimely payments to injured workers. (NRS 616A.400**,** 616D.120**)**

1. For the purposes of paragraph (h) of subsection 1 of NRS 616D.120, to determine whether an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has engaged in a pattern of untimely payments to injured workers, the Administrator will consider:

(a) The reasons given by the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company for making the payments after the time set forth in the applicable statute or regulation;

(b) The efforts made by the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company to make the payments within the time set forth in the applicable statute or regulation;

(c) The date the payments were made;

(d) The number of injured employees who have received untimely payments;

(e) The number of untimely payments;

(f) The length of the time period in which the untimely payments occurred;

(g) Whether the amount of any payments due, or any portion of that amount, was unknown, unclear or ambiguous, and whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company took action or exercised reasonable diligence to determine the unknown amounts or to clarify the uncertainty or ambiguity and to make the payments due within the time set forth in the applicable statute or regulation or at any time thereafter;

(h) Whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company was advised, in writing, by the affected injured employee or a representative thereof that payments could be delayed pending the outcome of any further negotiations relating to the compensation that was due;

(i) Whether successive or numerous untimely payments have been made to a single injured employee;

(j) Whether the untimely payments involved the same form of compensation, such as temporary total disability;

(k) Whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company knew or reasonably should have known of the circumstances resulting in or likely to result in multiple untimely payments to one or more injured employees;

(l) Whether the insurer, organization for managed care, health care provider or third-party administrator established the policies and procedures required by NAC 616D.311 and complied with those policies and procedures;

(m) Whether the untimely payments were the result of error, lack of good faith or diligence, neglect or another cause within the control of the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company; and

(n) Any other circumstance which the Administrator deems relevant to determine whether untimely payments to one or more injured employees constitute a pattern of untimely payments that warrants awarding a benefit penalty to an injured employee.

~~[2. Timeliness of payments must be determined by the statute or regulation specifically applicable to the type of payment involved.]~~

~~[3.]~~ ***2.*** The insurer or third-party administrator shall record in the claim file the date on which any payment of compensation or other relief pursuant to chapters 616A to 617, inclusive, of NRS is made to an injured employee or other person or has been deposited for mailing to the injured employee or other person. This information must be provided to the Administrator upon request.

TEXT OF REPEALED SECTIONS

NAC 616A.050 "Chief" defined. (NRS 616A.400**)** "Chief" means the Chief Administrative Officer of the Workers' Compensation Section.

NAC 616A.170 "Manual" defined. (NRS 679B.130**)** "Manual" means the classifications and basic rates filed by the Advisory Organization, as defined in NRS 616A.045, and adopted by the Commissioner.

NAC 616B.016 Reports of claims. (NRS 616A.400**)**

1. Upon the request of the Administrator, each insurer shall file a report with the Administrator which contains the following information:

(a) For claims other than claims for an occupational disease:

(1) The number of new claims filed.

(2) The number of claims for accident benefits only that were accepted by the insurer.

(3) The number of claims for benefits for lost time that were accepted by the insurer.

(4) The number of compensable fatalities.

(5) The number of claims that were denied by the insurer.

(b) For claims for an occupational disease:

(1) The number of new claims filed.

(2) The number of claims for accident benefits only that were accepted by the insurer.

(3) The number of claims for benefits for lost time that were accepted by the insurer.

(4) The number of compensable fatalities.

(5) The number of claims that were denied by the insurer.

(c) The number of requests to reopen a claim.

(d) The number of requests to reopen a claim that were denied by the insurer.
(e) The number of claims for accident benefits only that were reopened by the insurer.
(f) The number of claims for benefits for lost time that were reopened by the insurer.
(g) The number of injured employees who received benefits for a permanent partial disability.
(h) The number of injured employees who received benefits for a permanent partial disability in a lump sum.
(i) The number of injured employees who received benefits for vocational rehabilitation.
(j) The number of injured employees who received benefits for vocational rehabilitation in a lump sum.
(k) The number of claims closed pursuant to subsection 1 of NRS 616C.235.
(l) The number of claims closed pursuant to subsection 2 of NRS 616C.235.
(m) The number of claims open at the end of the fiscal year.
(n) The total expenditures for claims reported in paragraphs (k) and (l).
(o) Expenditures on claims for:
    (1) A temporary total disability.
    (2) A temporary partial disability.
    (3) A permanent total disability.
    (4) A permanent partial disability.
    (5) Benefits for survivors.
    (6) Burial expenses.
    (7) Travel and per diem expenses.
    (8) All medical expenses.
    (9) Vocational rehabilitation, including, without limitation, expenditures for:
        (I) Vocational rehabilitation maintenance.
        (II) The payment of compensation in a lump sum in lieu of vocational rehabilitation services.
        (III) Program expenses.
        (IV) Administrative expenses.
        (V) Other expenses relating to vocational rehabilitation.
(p) Amounts recovered:
    (1) By subrogation of claims.
    (2) From the:
        (I) Subsequent Injury Account for Self-Insured Employers established pursuant to NRS 616B.554;
        (II) Subsequent Injury Account for Associations of Self-Insured Public or Private Employers established pursuant to NRS 616B.575; or
        (III) Subsequent Injury Account for Private Carriers established pursuant to NRS 616B.584.
    (3) From other sources.
(q) Any other information requested by the Administrator.
2. The information required pursuant to subsection 1 must, except as otherwise requested by the Administrator, include information concerning any administrative activity during the previous fiscal year relating to:
(a) A claim for an injury that occurred during that year; and

(b) Any other claims, regardless of when the injury occurred.

3. As used in this section:

(a) "Claim for accident benefits only" means a claim in which the benefits received by the injured employee or his or her dependents for the duration of the claim did not include benefits for a temporary total disability, temporary partial disability or permanent total disability.

(b) "Claim for benefits for lost time" means a claim in which the benefits received by the injured employee or his or her dependents for the duration of the claim included benefits for a temporary total disability, temporary partial disability or permanent total disability.

(c) "Vocational rehabilitation maintenance" has the meaning ascribed to it in NRS 616C.575.