PROPOSED REGULATION OF THE

DIVISION OF INDUSTRIAL RELATIONS OF THE

DEPARTMENT OF BUSINESS AND INDUSTRY

LCB File No. R028-23

November 1, 2023

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

AUTHORITY: §§ 1, 2, 3 and 5, NRS 616A.400; § 4, NRS 616A.400 and 616D.120.

A REGULATION relating to industrial insurance; eliminating certain duplicative language concerning the method of obtaining certain forms; revising provisions relating to the manner in which the Administrator of the Division of Industrial Relations of the Department of Business and Industry must determine the timeliness of certain payments; removing a requirement for an insurer to file with the Administrator a report containing certain information upon request of the Administrator; removing certain obsolete requirements; removing a definition; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Administrator of the Division of Industrial Relations of the Department of Business and Industry to regulate forms of notice, claims and other blank forms deemed proper and advisable. (NRS 616A.400) Existing regulations require a completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist" that is prescribed by the Administrator to be included with the submission of a claim for reimbursement from the: (1) Subsequent Injury Account for Private Carriers; (2) Subsequent Injury Account for Self-Insured Employers; and (3) Subsequent Injury Account for Associations of Self-Insured Public or Private Employers. Existing regulations provide that a copy of the Form D-37 may be obtained from the Administrator at no cost. (NAC 616B.760, 616B.7702, 616B.7773) Existing regulations additionally provide that a copy of the Form D-37 may be obtained on the Internet website maintained by the Administrator. (NAC 616B.7702, 616B.7773) **Section 1** of this regulation eliminates duplicative language from provisions setting forth procedures for the submission of a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers which provides that a copy of the Form D-37 may be obtained from the Administrator or on the Internet website maintained by the Administrator at no cost. **Section 2** of this regulation makes a conforming change relating to the renumbering of subsections in **section 1**.

Existing law requires the Administrator to impose certain fines upon an insurer, organization for managed care, health care provider, third-party administrator, employer or professional employer organization that has engaged in a pattern of untimely payments to injured

employees. (NRS 616D.120) Existing regulations: (1) set forth certain considerations the Administrator will consider in determining whether such a person has engaged in a pattern of untimely payments to injured workers; and (2) specifically require the timeliness of payments to be determined by the statute or regulation specifically applicable to the type of payment involved. (NAC 616D.413) **Section 4** of this regulation removes provisions which specifically require that the timeliness of payments be determined by the statute or regulation specifically applicable to the type of payment involved.

Existing regulations require each insurer, upon the request of the Administrator, to file a report with the Administrator which contains certain information relating to claims. (NAC 616B.016) **Section 5** of this regulation repeals that requirement.

Before the enactment of Senate Bill No. 316 (S.B. 316) of the 1993 Legislative Session, existing law required certain employers to annually submit to the Administrator financial information relating to employee exposure and claim losses incurred in such employment. (Former NRS 616.255, 616.256) S.B. 316 repealed that requirement. (Section 285 of Senate Bill No. 316, chapter 265, Statutes of Nevada 1993, at page 805) **Section 5** repeals obsolete requirements set forth in existing regulations relating to that requirement. **Section 5** also repeals a definition that is rendered unnecessary by the repeal of those requirements. **Section 3** of this regulation makes a conforming change to remove a reference to certain provisions repealed by **section 5**.

Section 1. NAC 616B.7702 is hereby amended to read as follows:

616B.7702 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.]~~ 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. 2. NAC 616B.7704 is hereby amended to read as follows:

616B.7704 1. Except as otherwise provided in subsection ~~[5]~~ ***4*** of NAC 616B.7702 or paragraph (b) or (c) of subsection 1 of NAC 616B.77013, not later than 60 days after the date on which a claim is served on the Administrator pursuant to NAC 616B.7702, the Administrator shall:

(a) Submit to the Board a recommendation concerning the approval or disapproval, in whole or in part, of:

(1) The claim; and

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

(b) Notify the self-insured employer who submitted the claim or the person designated pursuant to NAC 616B.7703 or 616B.77031, as applicable, to accept service on behalf of the self-insured employer of that recommendation.

2. The Administrator shall include with the recommendation the information necessary for the Board to evaluate the claim and the expenses related to the claim, 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 the recommendation; and

(c) A list of each witness, if any, whom the Administrator would likely call before the Board to support the recommendation, if contested.

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

(a) The claim; and

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

4. When rendering a decision pursuant to subsection 3, the Board will approve a claim and the expenses of a self-insured employer, in whole or in part, only if the employer proves by a preponderance of the evidence that all of the requirements of NRS 616B.557 or 616B.560, as applicable, have been satisfied.

Sec. 3. NAC 616C.550 is hereby amended to read as follows:

616C.550 As used in NAC 616C.550 to [616C.613,] ***616C.610,*** inclusive, unless the context otherwise requires:

1. "Employer" means the employer for whom an employee worked when the employee:

(a) Sustained an injury arising out of and in the course of his or her employment; or

(b) Was last exposed to the conditions resulting in an occupational disease,

➥ for which the employee requires vocational rehabilitation services.

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

3. "Vocational rehabilitation services" may include:

(a) Counseling and guidance by a vocational rehabilitation counselor.

(b) An evaluation of the functional capacity of the injured employee and medical consultations to determine his or her level of participation in a program of vocational rehabilitation.

(c) Ergonomic modifications, lifting devices and other reasonable accommodations approved by the insurer which would enhance the employability of the injured employee.

(d) Assistance in job placement by vocational rehabilitation counselors, with special consideration given to fitting the requirements of the job to the ability of the injured employee.

(e) Vocational testing.

(f) Programs of vocational rehabilitation.

(g) Vocational rehabilitation maintenance.

(h) A reasonable allowance for transportation.

(i) The payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services.

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

616D.413 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.]~~ 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.

Sec. 5. NAC 616A.050, 616B.016 and 616C.613 are hereby repealed.

TEXT OF REPEALED SECTIONS

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

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 claims for which benefits for a permanent total disability were paid.

(j) The number of claims for which death benefits were paid.

(k) The number of injured employees who received benefits for vocational rehabilitation.

(l) The number of injured employees who received benefits for vocational rehabilitation in a lump sum.

(m) The number of claims closed pursuant to subsection 1 of NRS 616C.235.

(n) The number of claims closed pursuant to subsection 2 of NRS 616C.235.

(o) The number of claims open at the end of the fiscal year.

(p) The total expenditures for claims reported in paragraphs (m) and (n).

(q) 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.

(r) 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 the Fund for Workers' Compensation and Safety established by NRS 616A.425 for increases in compensation for a permanent total disability pursuant to NRS 616C.266 and increases in death benefits pursuant to NRS 616C.268.

(4) From other sources.

(s) 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.

616C.613 Reports of employee exposure and claims. (NRS 616A.400)

1. Reports relating to employees' exposure and losses from claims are due by April 1 and must cover employment and loss experience during the preceding calendar year.

2. The Chief will provide employers with the proper forms and instructions for their completion at least 60 days before the date on which they are due.