ADOPTED REGULATION OF THE ADMINISTRATOR OF THE

DIVISION OF INDUSTRIAL RELATIONS OF THE

DEPARTMENT OF BUSINESS AND INDUSTRY

LCB File No. R007-06

Effective June 1, 2006

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

AUTHORITY: §§1-5, 8 and 12, NRS 616A.400; §6, NRS 616A.400 and 616C.477; §7, NRS 616A.400 and 616C.420; §9, NRS 616A.400, 616D.200 and 616D.220; §§10 and 11, NRS 616A.400 and 616D.120.

A REGULATION relating to industrial insurance; revising certain requirements of insurers and third-party administrators concerning the administration of files of claims of injured workers regarding industrial injuries and the payment of compensation to claimants; establishing the circumstances under which an injured employee is entitled to compensation for lost wages while receiving medical treatment under certain circumstances; increasing the maximum amount of certain fines and benefit penalties; expanding the list of prohibited acts for which a benefit penalty may be imposed; revising certain requirements concerning duties of employers to provide information to the Administrator of the Division of Industrial Relations of the Department of Business and Industry regarding the amount of premiums owed by the employer under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 616A of NAC is hereby amended by adding thereto a new section to read as follows:

"Office" means a place of business which is located in this State and which is operated and maintained by an insurer or third-party administrator. The term does not include the private residence of a person who works for the insurer or third-party administrator.

Sec. 2. NAC 616A.010 is hereby amended to read as follows:

616A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in:

1. NRS 616A.030 to 616A.360, inclusive; and

2. NAC 616A.015 to 616A.270, inclusive, ***and section 1 of this regulation,***

➥ have the meanings ascribed to them in those sections.

Sec. 3. NAC 616B.001 is hereby amended to read as follows:

616B.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in:

1. NRS 616A.030 to 616A.360, inclusive; and

2. NAC 616A.015 to 616A.270, inclusive, ***and section 1 of this regulation,***

➥ have the meanings ascribed to them in those sections.

Sec. 4. NAC 616B.013 is hereby amended to read as follows:

616B.013 1. An insurer ***or third-party administrator*** shall ensure that [the files of claims and records maintained by the insurer pursuant to] ***each file of any claim of an injured worker concerning an industrial injury which is filed in accordance with*** chapters 616A to 617, inclusive, of NRS or a regulation adopted pursuant thereto [are] ***is*** available for inspection ***during regular business hours*** by [the] ***:***

(a) The injured worker;

(b) The attorney or other authorized representative of the injured worker;

(c) The Commissioner or his designee ***;*** or [by the Administrator during regular business hours.]

(d) The Administrator.

2. All files of the claims ***of injured workers concerning industrial injuries*** must be [kept, maintained and] administered in this State [.] ***and be available for inspection at an office of the insurer or third-party administrator in this State.***

3. After reviewing the file of a claim, the Commissioner or Administrator will report his findings to the insurer.

Sec. 5. NAC 616B.021 is hereby amended to read as follows:

616B.021 Not later than the date that compensation is due to a claimant, an insurer or third-party administrator shall:

1. Mail a check for compensation ***, a benefit penalty or a penalty imposed pursuant to NRS 616C.065*** to [the] ***:***

(a) The claimant; or

(b) Upon the written direction of the claimant, the attorney or other authorized representative of the claimant; or

2. Make a check for compensation ***, a benefit penalty or a penalty imposed pursuant to NRS 616C.065*** available to the claimant ***or, if directed in writing by the claimant, the attorney or other authorized representative of the claimant*** in the office of the insurer or third-party administrator.

Sec. 6. Chapter 616C of NAC is hereby amended by adding thereto a new section to read as follows:

1. In determining whether an injured employee is entitled to compensation pursuant to NRS 616C.477, the insurer shall calculate the required distance the injured employee is required to travel to receive medical treatment with the use of:

(a) Any computer software that determines the distance between one or more geographic locations;

(b) A map which indicates the distance between one or more geographic locations and which has been published;

(c) A travel calculator established on the Internet; or

(d) A properly calibrated odometer that is capable of verifying the distance between one or more geographic locations.

2. The amount of time for which an injured employee who is entitled to compensation pursuant to this section is absent from the place of employment of the responsible employer includes the amount of time the injured employee spends:

(a) Traveling from the place of employment to the location at which the employee receives medical treatment;

(b) Awaiting and receiving medical treatment at the facility for such treatment; and

(c) Traveling to return to the place of employment from the location at which he receives medical treatment.

3. If the amount of time for which the injured employee is entitled to compensation pursuant to subsection 2 is:

(a) Four hours or less in 1 working day, the injured employee is entitled to compensation at the rate of 50 percent of the daily rate of compensation that the employee is entitled to pursuant to NRS 616C.475 for a temporary total disability.

(b) More than 4 hours in 1 working day, the injured employee is entitled to compensation at the rate of 100 percent of the daily rate of compensation that the employee is entitled to pursuant to NRS 616C.475 for a temporary total disability.

4. If an injured employee seeks compensation pursuant to this section, the injured employee shall submit the request for such compensation to the employer on form D-24, Request for Reimbursement of Expenses for Travel and Lost Wages, as required by NAC 616A.480.

5. As used in this section, "place of employment" means the office, facility or site of the responsible employer at which the injured employee is required to report for work, including, without limitation, the office, facility or site at which the injured employee:

(a) Is regularly scheduled to report for work; or

(b) Is scheduled to report for a particular period, date or assignment, if the office, facility or site is different from the regularly scheduled location to report to work.

Sec. 7. NAC 616C.441 is hereby amended to read as follows:

616C.441 ***1.*** The [~~rate of pay~~] ***earnings of an injured employee*** on the date [~~of the~~] ***on which an*** accident ***occurs*** or [~~the onset of the~~] ***the date on which an injured employee is no longer able to work as a result of contracting an occupational*** disease will be used to calculate the average monthly wage.

2. As used in this section, "earnings" includes, without limitation, the money, goods and services set forth in NAC 616C.423.

Sec. 8. NAC 616C.571 is hereby amended to read as follows:

616C.571 [~~1. Except as otherwise provided in this section, if~~] ***If*** an injured employee is required to travel more than [~~40~~] ***50*** miles per day to participate in a program of vocational rehabilitation, an insurer shall reimburse the injured employee for the costs of transportation [~~:~~

~~(a) For not more than 200 miles per week; and~~

~~(b) Computed~~] ***which must be computed*** at a rate [~~not to exceed~~] ***equal to*** the mileage allowance for state employees who use their personal vehicles for the convenience of the State.

[~~2. For the entire period of a program of vocational rehabilitation, an insurer shall not reimburse an injured employee more than $1,600 for the costs of transportation of which:~~

~~(a) Not more than $600 may be for costs incurred by the employee during the development of the program; and~~

~~(b) Not more than $1,000 may be for costs incurred during the period in which the employee participates in the program.]~~

Sec. 9. NAC 616D.340 is hereby amended to read as follows:

616D.340 ~~[Within 10 working days after the]~~

1. If the Administrator notifies an employer ~~[of his determination, made pursuant to NRS 616D.200,]~~ that the employer failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS ~~[:~~

~~1. The employer shall]~~ ***and that the employer is required to provide information to the Administrator for the calculation of the premiums that would otherwise have been owed to a private carrier, the employer or the former or current private carrier of the employer, as applicable, must*** provide written information to the Administrator that verifies the amount of ~~[pay earned by his employees during the period that the employer was doing business in this state without providing and securing compensation; or]~~ ***the premiums that the employer otherwise would have owed to a private carrier for the period that the employer was uninsured.***

2. ***If the Administrator notifies an employer that the employer knowingly failed to report a material fact concerning the amount of payroll upon which his premium was based pursuant to NRS 616C.220 and that the employer is required to provide information to the Administrator for the calculation of the premium that would have been due had the proper information been submitted, the employer or the former or current private carrier of the employer, as applicable, must provide written information to the Administrator that verifies***

the amount of the premium that would have been due if the proper information had been submitted.

3. If the employer ***or the former or current private carrier of the employer, as applicable,*** fails or is unable to provide the information required pursuant to subsection 1 [, he shall calculate and provide to the Administrator an estimate] ***or 2, the employer shall verify the actual amount*** of the pay earned by his employees during the period that the employer was [doing business in this state without providing and securing compensation, using the wages actually received or deemed to be received, pursuant to the applicable provisions of chapters 616A to 617, inclusive, of NRS, by his employees.] ***uninsured or in which the employer knowingly failed to report a material fact concerning the amount of payroll upon which the premium was based.***

4. If the employer or the former or current private carrier of the employer, as applicable, fails or is unable to provide the information required by subsection 1, 2 or 3, the Administrator may estimate the premiums that the employer otherwise would have owed to a private carrier for the period during which the employer was uninsured or during which the employer failed to report a material fact concerning the amount of payroll upon which the premium was based.

Sec. 10. NAC 616D.345 is hereby amended to read as follows:

616D.345 1. [Except as otherwise provided in NAC 616D.375, if] ***If*** the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 [notifies the Administrator, pursuant to NRS 616D.120, that the Unit will] ***does*** not prosecute an employer for failing to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS or any regulation adopted pursuant thereto, the Administrator will:

(a) For a failure to provide and secure compensation for a period of ~~[30]~~ ***90*** days or less, impose an administrative fine ~~[in an amount that equals 10 percent of the expected annual premium of the employer or $500, whichever is greater.]~~ ***not to exceed $1,000.***

(b) For a failure to provide and secure compensation for a period of more than ~~[30]~~ ***90*** days, ***but not more than 1 year,*** impose an administrative fine in an amount ~~[that equals 20 percent of the expected annual premium of the employer or $1,000, whichever is greater.]~~ ***not to exceed $5,000.***

(c) For a failure to provide and secure compensation for a period of more than 1 year, impose an administrative fine not to exceed $15,000.

2. In ~~[no case will]~~ ***determining the amount of the administrative fines pursuant to subsection 1,*** the Administrator ~~[impose an administrative fine pursuant to this section that is greater than $10,000.]~~ ***will consider whether:***

(a) The employer is a small employer; and

(b) The failure to provide and secure compensation was the result of:

(1) An error of a private carrier or other third party;

(2) An unintentional error of the employer; or

(3) An intentional violation by the employer.

3. If the employer is a small employer and the failure to provide and secure compensation was not the result of an intentional violation by the employer, the Administrator may reduce the administrative fine imposed pursuant to this section by not more than 50 percent of the fine.

4. As used in this section, "small employer" means an employer which employs less than 150 full-time or part-time employees.

Sec. 11. NAC 616D.411 is hereby amended to read as follows:

616D.411 1. To determine the amount of a benefit penalty required to be paid pursuant to subsection 3 of NRS 616D.120, the Administrator will determine that the violation caused physical or economic harm to the injured employee or his dependents if he finds, by a preponderance of the evidence, that:

(a) The harm would not have occurred but for the violation;

(b) The violation was a substantial factor in bringing about the harm; and

(c) There is no supervening cause that is responsible for bringing about the harm.

2. Physical harm must be established by a preponderance of objective medical evidence in the form of existing medical records or medical records furnished by the claimant.

3. The Administrator will determine the amount of a benefit penalty required to be paid pursuant to subsection 3 of NRS 616D.120 according to the following schedule. In addition to the required minimum benefit penalty of $5,000, a claimant will be awarded ~~[$1,000]~~ ***$1,625*** for each point assessed, but in no event will the amount of the benefit penalty be greater than ~~[$25,000.]~~ ***$37,500.***

Points assessed for physical harm:

Temporary minor harm .... 2 points

Temporary major harm .... 5 points

Permanent minor harm .... 5 points

Permanent major harm .... 10 points

Death .... 20 points

Points assessed for the amount of compensation found to be due the claimant:

Amount of compensation

$3,001 - $5,000.. 1 point

$5,001 - $7,000..2 points

$7,001 - $9,000..3 points

$9,001 - $11,000..4 points

$11,001 - $13,000..5 points

$13,001 - $15,000..6 points

$15,001 - $17,000..7 points

$17,001 - $19,000..8 points

$19,001 - $21,000..9 points

An amount that is greater than $21,000 ....10 points

Points assessed for prior violations:

One prior violation .... 1 point

Two prior violations ....3 points

More than two prior violations..5 points

Points assessed for economic harm:

Amount of economic harm

$6,001 - $7,000.. 1 point

$7,001 - $8,000..2 points

$8,001 - $9,000..3 points

$9,001 - $10,000..4 points

$10,001 - $11,000..5 points

$11,001 - $12,000..6 points

$12,001 - $13,000..7 points

$13,001 - $14,000..8 points

$14,001 - $15,000..9 points

More than $15,000 ....10 points

4. To determine the number of prior violations of an insurer, organization for managed care, health care provider, third-party administrator or employer, the Administrator will consider only those fines and benefit penalties imposed pursuant to paragraphs (a) to (e), inclusive, ***and (h)*** of subsection 1 of NRS 616D.120 in the immediately preceding ~~[3]~~ ***5*** years.

5. As used in this section:

(a) "Dependent" means a person who:

(1) At the time of the violation, is:

(I) The spouse of the injured employee;

(II) A child of the injured employee and is under 18 years of age; or

(III) A child of the injured employee, is 18 years of age or older and is physically or mentally incapacitated and unable to earn a wage; or

(2) Is a parent of the injured employee, a child of the injured employee who is 18 years of age or older, a stepchild of the injured employee or a sibling of the injured employee if that person's dependency upon the injured employee is established by a federal income tax return of the injured employee or by any other reliable evidence.

(b) "Economic harm" includes:

(1) The loss of money or an item of monetary value; and

(2) The deprivation of a reasonable expectation of a financial or monetary advantage.

(c) "Permanent major harm" means physical harm that:

(1) Results in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is unlikely to be alleviated in spite of medical treatment that a reasonable person is willing to undergo.

(d) "Permanent minor harm" means physical harm that:

(1) Does not result in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is unlikely to be alleviated in spite of medical treatment that a reasonable person is willing to undergo.

(e) "Physical harm" means death or any physiological disorder or condition, cosmetic disfigurement or anatomic loss affecting one or more of the following body systems:

(1) The neurological system.

(2) The musculoskeletal system.

(3) Special sense organs.

(4) The respiratory system, including, without limitation, speech organs.

(5) The cardiovascular system.

(6) The reproductive system.

(7) The digestive system.

(8) The genitourinary system.

(9) The hemic and lymphatic system.

(10) The skin.

(11) The endocrine system.

(f) "Temporary major harm" means physical harm that:

(1) Results in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is likely to be alleviated with or without medical treatment.

(g) "Temporary minor harm" means physical harm that:

(1) Does not result in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is likely to be alleviated with or without medical treatment.

Sec. 12. NAC 616D.350, 616D.355, 616D.360, 616D.370, 616D.375, 616D.380 and 616D.385 are hereby repealed.

TEXT OF REPEALED SECTIONS

616D.350 Failure to maintain compensation: Verification or estimation of amount of payroll. (NRS 616A.400, 616D.200) After the Administrator notifies an employer of his determination, made pursuant to NRS 616D.200, that the employer failed to maintain compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS:

1. The employer shall, within 10 working days, provide written information to the Administrator that verifies the amount of pay earned by his employees during the period that the employer was doing business in this state without maintaining the compensation; or

2. If the employer fails or is unable to provide the information pursuant to subsection 1, the Administrator will estimate the payroll of the employer for the period that the employer was doing business in this state without maintaining the compensation, based on reports of payroll previously submitted by the employer to the insurer and on the wages deemed to be received by the employer's employees pursuant to the applicable provisions of chapters 616A to 617, inclusive, of NRS.

616D.355 Failure to maintain compensation: Imposition of administrative fine. (NRS 616A.400, 616D.120)

1. Except as otherwise provided in NAC 616D.375, if the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the Unit will not prosecute an employer for failing to maintain compensation as

required by the terms of chapters 616A to 616D, inclusive, of NRS or any regulation adopted pursuant thereto, the Administrator will:

(a) If the employer failed to maintain compensation for a period of 30 days or less:

(1) For the first violation, impose an administrative fine in an amount that equals 10 percent of the expected annual premium of the employer or $250, whichever is greater.

(2) For the second violation, impose an administrative fine in an amount that equals 25 percent of the expected annual premium of the employer or $1,000, whichever is greater.

(3) For the third violation, impose an administrative fine in an amount that equals 50 percent of the expected annual premium of the employer or $5,000, whichever is greater.

(4) For the fourth or any subsequent violation, impose an administrative fine of $10,000.

(b) If the employer failed to maintain compensation for a period of more than 30 days:

(1) For the first violation, impose an administrative fine in an amount that equals 20 percent of the expected annual premium of the employer or $500, whichever is greater.

(2) For the second violation, impose an administrative fine in an amount that equals 50 percent of the expected annual premium of the employer or $2,000, whichever is greater.

(3) For the third or any subsequent violation, impose an administrative fine of $10,000.

2. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than $10,000.

616D.360 Failure to provide, secure and maintain compensation: Verification of amount of charge imposed. (NRS 616A.400, 616D.200) The amount of any charge imposed by the Administrator pursuant to NRS 616D.200 is subject to verification by auditors of the insurer, including auditors employed by the Industrial Insurance Regulation Section.

616D.370 Failure to provide, secure and maintain compensation: Modification of amount of charge imposed. (NRS 616A.400, 616D.200) At any hearing held pursuant to subsection 2 of NRS 616D.220, on appeal from a determination of the Administrator made pursuant to NRS 616D.200, the Administrator may modify the amount charged the employer if it is shown by a preponderance of the evidence that the:

1. Failure to provide and secure or maintain compensation was caused by an error on the part of the insurer; or

2. Employer:

(a) Was exempt from the requirement to provide and secure or maintain compensation; or

(b) Had good cause for his failure to provide and secure or maintain compensation.

616D.375 Failure to provide, secure and maintain compensation resulting in assignment of claim to uninsured employers' claim account: Imposition of administrative fine. (NRS 616A.400, 616D.120)

1. If the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the unit will not prosecute an employer for failing to provide and secure or to maintain compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS or any regulation adopted pursuant thereto and that failure results in an uninsured claim that is assigned to the Uninsured Employers' Claim Account pursuant to NRS 616C.220, the Administrator will, for each violation, impose an administrative fine in an amount that equals 25 percent of the expected annual premium of the employer or $1,000, whichever is greater.

2. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than $10,000.

616D.380 False statement or failure to report material fact concerning amount of payroll: Imposition of administrative fine. (NRS 616A.400, 616D.120)

1. If the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the Unit will not prosecute an employer for knowingly making a false statement or knowingly failing to report a material fact concerning the amount of payroll upon which a premium is based in violation of NRS 616D.220 or any regulation adopted pursuant thereto, the Administrator will:

(a) For the first violation that results in an unreported or underreported payroll, impose an administrative fine of 10 percent of the expected annual premium of the employer or $250, whichever is greater.

(b) For the second violation that results in an unreported or underreported payroll, impose an administrative fine of 25 percent of the expected annual premium of the employer or $1,000, whichever is greater.

(c) For the third violation that results in an unreported or underreported payroll, impose an administrative fine of 50 percent of the expected annual premium of the employer or $5,000, whichever is greater.

(d) For the fourth or any subsequent violation that results in an unreported or underreported payroll, impose an administrative fine of $10,000.

2. For the purpose of imposing administrative fines pursuant to this section, the Administrator will not deem a second, third, fourth or subsequent violation to have occurred unless it occurs in an audit period that is subsequent to the audit period in which the previous violation occurred.

3. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than $10,000.

616D.385 Misrepresentation of classification or duties of employee: Imposition of administrative fine. (NRS 616A.400, 616D.120)

1. If the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the Unit will not prosecute an employer for knowingly misrepresenting the classification or duties of an employee in violation of NRS 616D.220 or any regulation adopted pursuant thereto, the Administrator will:

(a) For the first violation, impose an administrative fine of 10 percent of the expected annual premium of the employer or $250, whichever is greater.

(b) For the second violation, impose an administrative fine of 25 percent of the expected annual premium of the employer or $1,000, whichever is greater.

(c) For the third violation, impose an administrative fine of 50 percent of the expected annual premium of the employer or $5,000, whichever is greater.

(d) For the fourth or any subsequent violation, impose an administrative fine of $10,000.

2. For the purpose of imposing administrative fines pursuant to this section, the Administrator will not deem a second, third, fourth or subsequent violation to have occurred unless it occurs in an audit period that is subsequent to the audit period in which the previous violation occurred.

3. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than $10,000.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R007-06

The Administrator of the Division of Industrial Relations of the Department of Business and Industry adopted regulations assigned LCB File No. R007-06 which pertain to chapters 616A, 616B, 616C and 616D of the Nevada Administrative Code on May 12, 2006.

Notice date: 1/13/2006
Hearing date: 2/14/2006
Date of adoption by agency: 5/12/2006
Filing date: 6/1/2006

IN THE MATTER RELATING TO INDUSTRIAL INSURANCE: ESTABLISHING REQUIREMENTS REVISING CERTAIN REQUIREMENTS OF INSURERS AND THIRD-PARTY ADMINISTRATORS CONCERNING THE ADMINISTRATION OF FILES OF CLAIMS AND RECORDS AND THE PAYMENT OF COMPENSATION TO CLAIMANTS; ESTABLISHING THE CIRCUMSTANCES UNDER WHICH AN INJURED EMPLOYEE IS ENTITLED TO COMPENSATION FOR LOST WAGES WHILE RECEIVING MEDICAL TREATMENT UNDER CERTAIN CIRCUMSTANCES; INCREASING THE MAXIMUM AMOUNT OF CERTAIN FINES AND BENEFIT PENALTIES; EXPANDING THE LIST OF PROHIBITED ACTS FOR WHICH A BENEFIT PENALTY MAY BE IMPOSED; REVISING CERTAIN REQUIREMENTS CONCERNING DUTIES OF EMPLOYERS TO PROVIDE INFORMATION TO THE ADMINISTRATOR OF THE DIVISION OF INDUSTRIAL RELATIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY CONCERNING THE AMOUNT OF PREMIUMS OWED BY THE EMPLOYER UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO
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INFORMATIONAL STATEMENT

1. A description of how comments were solicited from the public and affected businesses, a summary of responses from the public and affected businesses and an explanation of how other interested persons may obtain a copy of the summary.

Section 2 of Assembly Bill 58 authorizes an injured employee who, as a result of his injury, qualified for benefits for a temporary total disability pursuant to NRS 616C.475 and who receives medical treatment for his injury after he returns to work to compensation for each hour

he is absent from the place of employment of the responsible employer to receive such medical treatment if he is required to travel more than 50 miles one way from the place of employment to receive such medical treatment. Section 2 of Assembly Bill 254 amends NRS 616D.120 to add "(h) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS. Also administrative fine amounts are increased to $1,500 for each initial violation, or a fine of $15,000 for a second or subsequent violation.

Accordingly, the Division held a workshop on July 18, 2005 and public hearing on February 14, 2006, on the draft regulation that details definitions and computations of AB 58's 50-mile compensation, AB 254's new fine schedule and other matters relating to claim file access and compensation check availability. In conjunction with providing notice to the public and interested parties of the workshop and public hearing, the Division prepared the Small Business Impact Statement required by NRS 233B. The Division submitted the draft regulation and Small Business Impact Statement to the Legislative Counsel Bureau pursuant to NRS 233B.

A summary of the responses from the public and affected businesses is included in #2 of this Informational Statement and may be obtained by contacting the Division of Industrial Relations' Workers' Compensation Section at the following locations:

Workers' Compensation Section
1301 N. Green Valley Pkwy., #200
Henderson, NV 89074
Telephone: (702) 486-9080

Workers' Compensation Section
400 W. King St., #400
Carson City, NV 89703
Telephone: (775) 684-7270

2. The number of persons who attended the workshop, testified at each workshop, and submitted written statements to the agency.

The workshop was conducted on **July 18, 2005**, at two sites via videoconference: The main site was at the Sawyer Building in Las Vegas; the other site was at Legislative Building, Room 2135, 401 South Carson Street, Carson City, Nevada. In Las Vegas, **29** people attended and **3** testified; in Carson City, **12** attended and **3** testified. The oral testimony is summarized as follows:

Leslie Bell, Nevada CompFirst

- Ms. Bell requested a unique name for the AB 58 over 50 miles travel benefit to injured employees. This will allow for easy tracking.
- She would like to have a conversion of the paid time off work from the 4 hours to 50% daily TTD rate and the 8 hours to 100% daily TTD rate.

Don Jayne, Nevada Self-Insured Association

- Mr. Jayne clarified that the intent of the AB 58 is that the 4 hours paid are to be 50% of the injured employee's daily TTD rate and 8 hours are 100% of their daily TTD rate to reduce the debate over amount of dollars paid per hour.

- He also asked for clear information, separate from what the Hearings and Appeals offices would be presenting, in the required Annual Reports and that a break down of the data includes the name of the insurers, third-party administrators, employers, or other offending parties.
- He suggested that the definition of "place of employment" be the employer's place of business. He also suggested that DIR take a look at employers with multiple locations and create a definition to include different scenarios. He will submit additional written testimony.

Sharon Hallinan, Larry Beller and Associates

- Ms Hallinan wanted to know if after the initial qualifying for the TPD status, if the injured employee is eligible for the workers' compensation payment of the 4 to 8 hour time to seek medical treatment related to the same injury?
- She also questioned when an injured employee returning to work from the TPD status, works for a couple of days, goes to a medical visit, related to the same initial qualifying injury: Is the employer liable for the 1/3rd portion with workers' compensation covering the other 2/3^{rds} for the entire 4 or 8 hour time frame. In other words, how is it going to be figured for the compensation? And the employer liability for that payment?

Mike Livermore, Alternative Service Concepts

- Mr. Livermore requested clarification on circumstances when an injured worker stays overnight and would time be calculated based on 8-hour increments to equal 24+ hours for the overnight stay or based on actual lost time at work? He agreed with Leslie Bell and Don Jayne about the calculation of 4 hours being 50% of the daily TTD rate and 8 hours being 100% of the daily TTD rate.

Bob Ostrovsky, Employers Insurance Company of Nevada

- Mr. Ostrovsky clarified the AB 58 language of "responsible employer" in Section 2 subsection 1 to mean that the over 50 miles travel benefit would apply only if the employee stayed with the employer where the injury occurred.
- He gave suggestions on Section 2 subsection 4 regarding the documentation required to receive the over 50-mile travel benefit; that the purpose was not to require the insurers to have to calculate the distance between the workplace and every medical provider in the state. A request from the employee or the employer on behalf of the employee would be submitted and then the insurance company or the third-party administrator or the self-insured employer would make the determination if they're eligible and if so, what the appropriate payment would be.

Leslie Bell, Nevada CompFirst

- Ms. Bell recommended the definition of "place of employment" to be the place the employees are assigned to on the day they must be away from their employment.

- She suggests redoing the travel reimbursement form to include the over 50 miles travel benefit.

AB 254 DISCUSSION SUMMARY

Bob Ostrovsky, Employers Insurance Company of Nevada

- Mr. Ostrovsky requests clarification of "intentional violation" in NRS 616D.120, subsection 1, (h). He would like interpretation of the definition of "intentional" and clarification of LCB Proposed Regulation R118-02, section 36 *"…otherwise acts to cause the consequences…"*
- He will submit written testimony regarding intent versus clerical error versus some other kind of mistake that might be made in the claim administration.

Don Jayne, Nevada Self-Insured Association

- Mr. Jayne agrees with Mr. Ostrovsky in regards to "intent." The definition needs to be clarified to distinguish between an intentional violation and clerical error.
- He inquired as to whether DIR was going to modify the same fine point system used currently to determine fine severity and amount of fine to evaluate and determine benefit penalty amounts.

John Wiles, Division Counsel, Division of Industrial Relations

- Mr. Wiles clarifies that we have been using the guidelines for some time and they are in R-118.02 that had been filed with the Legislative Council Bureau. They are regulations that have been pending for some time and have been subject to public workshop, public hearing. The point system is in R-118.02 and we will be sending those out as soon as they are returned from LCB.

R. A. Drew, Injured Worker

- Ms. Drew inquired about how injured workers were informed of this workshop?

Chuck Verre, CAO, Workers' Compensation Section

- Mr. Verre responded that the document announcing the workshop is posted at various locations throughout the valley and by virtue of that, everyone's notified. Injured workers are not notified individually.

Dock Williams, Northern District Program Coordinator, Education, Research and Analysis Unit, Workers' Compensation Section

- Mr. Williams added that the notice was sent out by e-mail to all the customers for our e-mail addresses. A person can go to DIR Web site and sign up to receive the notices when these hearings will come.

R. A. Drew, Injured Worker

- Ms. Drew requested questioned if AB 254 applied to certain intentional violations of certain codes and statutes or does it apply to all intentional violations of all the codes and statutes applying to injured workers?

John Wiles, Division Counsel, Division of Industrial Relations

- Mr. Wiles responded to Ms. Drew's question, that the language regarding intentional violations already exists in 616D.120, subsection (h). Intentional violation was added to be included in the benefit penalty mechanism. The statute itself refers to intentional violations of any statute or any regulation adopted by the Division. It would only apply to those statutes and regulations in the Nevada Industrial Insurance Act and the Nevada Occupational Disease Act.

There were **4** written comments submitted by the August 2, 2005 deadline announced at the workshop. These comments are summarized as follows:

Jim Werbeckes, Employers Insurance Group

Recommends that the benefit be payable from place of employment defined as the office location of the employee where the employee was permanently assigned or dispatched on temporary duty.

This benefit should not be able to be transferred to a different employer

The existing C207 form for travel should be changed to include a place for the injured employee to request this benefit payment, as well as a place for the employer to verify that the injured employee did not receive compensation for the time off. The timeline for requesting benefit payment should be the same as the travel timeline that is 60 days.

The regulation should define the circumstances under which this benefit is payable. The office visit should be for medical treatment only.

Re: AB 254 – submitted suggested changes to "intentional act" definition to add: "… one act voluntarily and with purpose or design to violate the law and not because of mistake or other innocent reason, or if one desires to cause the consequences of one's actions and believes that the consequences are substantially certain to result from the violation."

Bruce C. Wood, American Insurance Association

Re: AB 58, recommend that "place of employment" is the employee's duty station—where he or she reports for work with the employer on whose employment the injury occurred.

Re; AB 254: "Intentional" in the context of an "intentional failure to comply" requires a test that does not unfairly penalize conduct that is no more than inadvertent, not purposeful. Recommend

language that requires a finding of “knowledge of the regulation along with clear and convincing evidence of motive to evade compliance.

Samuel Sorich, Property Casualty Insurers Association of America

“Place of employment” should mean employment with the employer at the time of the injury and not refer to employment with a new employer.

Form C207 could be changed to document compensation to travel to medical treatment.

Don Jayne, Nevada Self-Insured Association (letter 7/29/05)

The increments of 4 or 8 hours need to be clarified specifically linking them to the total temporary disability (TTD) rate. The 4 hours increment would be equal to 50% of the daily TTD rate and the 8-hour increment would be equal to 100% of the daily TTD rate.

The “place of employment” was identified by DIR as needing further definition to prevent confusion.

The definition of “intentional” as used in NRS 616D.120 needs to be clarified. DIR referenced an LCB document (R118-02) which was drafted when “intentional acts” were subject to administrative fines only. NSIA believes that the LCB definition (R118-02) of an intentional violation is too vague to be applied to benefit penalty provision of NRS 616D.120 and regulatory hearings need to be conducted specifically to address this change resulting from AB 254 (2005 Legislative Session)

The hearing was conducted on **February 14, 2006**, at two sites via videoconference: the main site was at the Sawyer Building in Las Vegas; the other site was at the Legislative Building in Carson City. In Las Vegas, **29** people attended and **2** testified; in Carson City, **12** attended and **4** testified. The oral testimony is summarized as follows:

Alice Magdaleno, Reiser and Associates Insurance Agency

- Concerned about having trouble with TPAs not allowing access to client’s claim information
- Wanted to know if this section prevents an employer or an employer’s representative from reviewing claims. Cited 616B.013.
- Complained about previous troubles with First Comp in particular, citing HIPAA, refusing access to claims records.

Chuck Verre, WCS CAO

- Stated that it does not prevent an employer or his representative, an agent for the claimant has the same rights.

John Wiles, Legal

- Statue 616B.012 concerns files of claims, does state that employers or their designated agents, are included as authorized persons to look at claims files.
- Something to consider when amending the regulation.

Bob Ostrovsky, Employers Insurance Company of Nevada

- Confused about the changes in the notice posted on Web site and the new one finished February 13, 2006.

Chuck Verre, WCS CAO

- Final draft finished late the previous afternoon. Most recent version located in back of room.

Bob Ostrovsky, Employers Insurance Company of Nevada

- Stated that entitlement to review files is limited to the particular claimant's file only.

Jim Warbeckes, Employers Insurance Group

- Would like to have placed in this section (Sec 5.): "By written direction of the claimant."
- Commented: If the claimant is going to be asking us to send his check to his attorney and/or authorized representative, we want to have written direction by that claimant for our files.

John Wiles, Legal

- Asked Mr. Warbeckes if he considered "written verification" as a general practice for injured workers to execute the Power of Attorney that authorizes the attorney of the injured worker to receive checks, etc.

Jim Warbeckes, Employers Insurance Group

- Would like to have something in the files that the claimant has directed them to send the claimant's check to a third party.

Chuck Verre, WCS CAO

- Stated, "What we generally see is a letter of representation or a letter directing the check go to the attorney."

Jim Warbeckes, Employers Insurance Group

- Sometimes we want something in our file that says the claimant is asking us to deliver or provide that check to his attorney or designated representative.

Don Jayne, Nevada Self Insured

- Would, also, like to have some evidence in files to indicate that the client requested them to pay the money to an attorney.

Dave Oakden, S & C Claims

- Would like more technical classification on "payments for travel." Asked if the payments for travel were considered reimbursement or compensation. Regulations call it compensation. Statutes call it compensation. This could change the status of the claim. Gave example: Injured worker from Battle Mountain travels to Reno for an MRI. We pay him compensation for the day. Mr. Oakden questions if that changes the status of the claim from medical only to lost time.
- Has similar question in regards to calculations of Permanent Partial Disabilities. He stated that the last day of TPD is the effective date of PPD. If someone travels for PPD evaluation, they are paid the TPD rate for that day, which essentially cancels out any initial installment of PPD up to the date of the last compensation.
- Requests that if the compensation benefit is listed in this section, that the regulation be clarified, for state reporting purposes, and that it be categorized as a TPD.

Chuck Verre , WCS CAO

- Asks if the question is whether a claim where there is no lost time and somebody is paid –TTD for one day for travel, as a result of that payment the question is "Does that payment turn the claim into a lost time claim or is it still a medical only claim for purposes of reporting?"
- When you go to calculate the permanent partial disability entitlement you have to decide whether it's one without a TTD or is it calculated from the last payment of TTD as a result of the travel.

Dave Oakden, S & C Claims

- Verifies that that is what he is asking.

Bob Ostrovsky, Employers Insurance Company of Nevada

- Questions paragraph 4, section 6.
- Would like some affirmative statement from the employee that he was not paid from some other source included in the D-24 form. His concern is that the employer has already paid the injured worker for this time.

Leslie Bell, Nevada Comp First

- Stated that the injured worker has to already qualify for PPD before he can receive travel pay and be off work for 5 days.

John Wiles, Legal

- Believes the bill is correct. AB 58, section 2, subsection 1 describes an employee who is entitled to receive qualifying benefits for TTD.

Mike Livermore, Alternative Service Concepts

- Believes that an additional section is required to define explicitly that among the things to be taken into consideration is whether the employer paid the employee wages for the travel, and that that form of compensation wouldn't be paid.

Leslie Bell, Nevada Comp First

- Would like to know what was the reason the regulation was enacted and why it was later amended.

John Wiles, Legal

- Explains one change was made to increase the mileage to be consistent with provisions in AB 58 in order to be consistent instead of having several mileage rules.
- It was discovered that there was an inequity in that there was a limitation on Voc Rehab and that that was why the change was made.

Leslie Bell, Nevada Comp First

- Asked what was the inequity that had to be corrected that it was put in and if anyone had looked at why it was put into place before it is taken out.

Chuck Verre, WCS CAO

- Stated that he doesn't believe that that has been done. He believes that it was done to comply with the statute, to make them the same.

Mike Livermore, Alternative Service Concepts

- States it is inappropriate to remove a regulation without researching it first or understanding why it was imposed.
- States there is no statute requiring this to be removed, reason to place limitations on Voc Rehab benefits, there was no legislation change requiring benefits to be paid in addition to what already exists.

- Understands if it where raised for cost of living or cost over time, but sees no reason to remove it.
- Asks that WCS revise and review it, and then bring it up again so that he can understand that there is no evasiveness or that the restraint is being unreasonably removed.
- He has heard no complaints from injured workers or their attorneys that it is inadequate as it stands.
- States the impact statement says that this has no impact on small businesses, but these kinds of changes impose a heavy burden on taxpayers in rural entities. He asks that there be thorough consideration of this kind of change to simply remove any limitation of benefits.

John Wiles, Legal

- States there is no specific authorizing statement in Voc Rehab (that he is aware of) that authorizes the division to set a limit that was established there. The statute doesn't inhibit us from making this change.
- The origin of this provision was added in 1994 and amended in 1998. Does not know how or why it was amended.

Ray Badger, Attorney for Injured Workers

- Major proponent for this change. Spoke to clients and Voc Rehab counselors, they all agree with the change, as well.
- Consider cost of gasoline, $600 limit, and 1400 miles, they don't last very long when a client has to travel 30-60 miles everyday.
- States that many people refuse Voc Rehab simply because they can't afford the travel expenses.

Don Jayne, Self Insured Association

- Agrees that it is not a good idea to remove the sections leaving an unlimited amount without first measuring the impact.

Chuck Verre, WCS CAO

- Written comments due by February 28, 2006.
- Hearing adjourned

There were **11** written comments submitted by the February 28, 2006 deadline announced at the hearing. These comments are summarized as follows:

Kate Diehl, Property Casualty Insurers (PCI) Association of America

PCI agrees with Employers Insurance Group comments regarding language in Section 4 with respect to who may have access to a claim file. The language is not clear enough to restrict

access to the claim file to only the injured worker and/or his or her authorized representative for only his or her own claim but may inadvertently grant access to any claim information the insurer has on file.

Don Jayne, Self Insured Association

Re: Sec. 5 R007-06 (NAC 616B.021): NSIA has no objection to the change that allows a claimant's check(s) to be mailed to the claimant's attorney or other authorized representative, but firmly believes this request or "direction" from the injured worker should be in writing so that supporting documentation can be retained in file. As this section allows for "other authorized representatives" which is not clearly defined, NSIA believes it is necessary.

Re: Sec. 7 R007-06 (NAC 616C.441): NSIA did not have major problems with the initial DIR version of the regulation changes, but there are developing concerns that the LCB version may have significant financial impact. NSIA is reviewing the changes to this section with impacted members who will provide feedback under separate cover. NSIA believes DIR should review closely the recommended changes from LCB to ensure that the new language is appropriate and consistent with DIR's perceived need to make changes to this section.

Re: Sec 8 007-06 (NAC 616C.571): The existing language in NAC 616C.571 specifies limitations on the maximum amounts allowable for travel reimbursement has been removed. Thus, the proposed regulation, based on Assembly Bill 58 and its 50-mile requirement minimum, have no limitations on the number of miles per week or the dollar amount that can be incurred during a vocational rehabilitation program.

The removal of limitations is inconsistent with DIR's statements that there are minimal economic impacts resulting from these proposed regulations. NSIA believes removing existing limitation on mileage reimbursement results in significant vocational rehabilitation cost increases and that maximum mileage reimbursement limitations should be reinstated.

Re: Sec 11 007-06 which in turn refers to Sec 35 LCB#R118-02: These changes include increased dollar amount benefit penalty fines and includes "intentional acts" as benefit penalties. Also, this section expands from 3 to 5 the number of years that the Administrator will consider when determining the number of prior violations for assigning points based on the number of prior violations. This is a significant expansion of the time period used for benefit penalties—NSIA believes this expansion was not required by AB 254 and is unnecessary.

As for "intentional" as referenced in Sec 11 of the proposed regulations. Please see attached memo, dated July 29, 2005 which goes into significant detail on this issue. NSIA strongly believes that additional workshops or hearings are necessary to clarify the definition of intentional acts and would appreciate the administrator addressing this concern.

NSIA is concerned that many of the proposed changes discussed above will result in fiscal impacts unanticipated by DIR based on economic impact comments in the Hearing notices.

Kathleen G. Bissell, Liberty Mutual

Re: Sec 4 NAC 616B.013: We are concerned that proposed changes may result in unauthorized access to claims information by claimants and attorneys. We respectfully request that the changes proposed be withdrawn and Section 4 remain in place as currently written.

Re: Sec 5 NAC 616B.021: Since the apparent purpose of the proposed change is to add language that would allow attorneys, as directed by claimants, to receive benefit checks instead f the claimants, we recommend the following changes to this section to assure that the intended changes are clear and mailing the checks to claimants (or authorized representatives) remains an acceptable option:

NAC 616B. 021 Payment of compensation to claimant (NRS 616A.400) not later than the date that compensation is due to a claimant, an insurer or third-party administrator shall:

1. Mail a check for compensation to the claimant **or, if directed by the claimant, the attorney or other authorized representative of the claimant**; or
2. Make a check for compensation available to the claimant or, **if directed by the claimant, the attorney or other authorized representative of the claimant**, in the office of the insurer or third-party administrator.

James Werbeckes, Employers Insurance Group

Re: Sec 4. There needs to be clarification that only the insurer is to provide only records to the injured worker and/or his authorized representative. Plus, subsection 2 of Sec 4 should reference NRS 616B.021 "Files of Claims; Accessibility: Maintenance; Inspection; Reproduction." (i.e. add "**pursuant to NRS 616B.021**" to the end of the subsection.)

Also, we oppose the deletion of language in Sec 8. An open-ended mileage reimbursement can lead to possible excessive reporting. We believe an adjustment to the statute is warranted, as there has not been an adjustment to the present cap for over 10 years. Employers Insurance Group supports increasing the cost of transportation to $4,500.00

Guy Holloway, Granite Construction Company

Re: NAC 616B.008. A breech of confidentiality must be considered regarding these types of documents; a secured viewing area would be required. Another area of concern may be privileged information contained in the files if a lawsuit were initiated. Furthermore, the security of the insurer and third-party administrator personnel would be an issue; there have been instances of our adjusters being threatened with physical violence. The bottom line is insurers and TPAs are simply not set up for the proposed regulation, and it would cause a significant financial impact to make these changes.

Victoria J. Robinson, City of Las Vegas

Re: Sec. 7 NAC 616C.441– Revised wording in Section 7 contradicts a recent Nevada Supreme Court decision in Oscar Howard vs. City of Las Vegas. The revised wording: … "the date o

which an injured employee contracts on occupational disease" flies in the face of this Supreme Court decision, as by definition, a disease which is a presumptive benefit is "contracted" while employed. And this regulation could be construed to mean the wages the employee was making when he was working should be used to calculate an Average Monthly Wage.

Allowing this wording to become regulation would lead to extensive litigation, as any public entity asked to pay TTD to a retired person will point to the Supreme Court decision as a basis for denial, while the claimant's attorney will point to the regulation as a rationale for appeal.

Also, DIR needs to revise the fiscal impact statement. On average, the cost of a retiree TTD claim could be between $250,000 - $500,000 and depending on the age of retiree and his/her longevity and his/her spouse could easily reach $1,000,000 per claim. Plus, the cost of ensuing litigation should be factored in.

Michelle Parvin, City of Reno

Re: LCB changes to Sec 7.1 NAC 616C.441:.."the date on which on employee contracts (emphasis added) an occupational disease…" I have been advised that this translates to use the wage at the time of last exposure for claimants who file post retirement. The previous version required the use of the date of disability, which we support.

We object to this change due to the potentially large fiscal impact it would have on the City of Reno, which expects to receive an increasing number of heart and lung claims from retired employees. Since PERS benefits are not considered wages, these retirees typically have a wage of zero at the time of disability, rendering a PTD benefit of $0. The Oct. 05 Nevada Supreme Court decision in the Oscar Howard case affirmed using the disability date for the Average Monthly Wage calculation; however, this language change effectively eliminates the benefits of this ruling for Nevada public employees with public safety personnel.

Raymond Badger, Attorney

Re: Sec. 7: The standard in this regulation (R007-06) used to calculate the Average Monthly Wage is in direct conflict with statutes and the Nevada Supreme Court opinion in Mirage v. Dept. of Admin 110 Nev.257 (1994) which held that the Average Monthly Wage in an occupational disease case is to be calculated using a period of earnings immediately preceding the "date of disablement." The date of disablement is defined as "the event of becoming physically incapacitated by reason of an occupational disease." As shown in the Mirage case, the date which an employee "contracts" an occupational disease is often different from the date upon which he becomes unable to work. I suggest NAC 616C.441(1) be amended to read as follows:

1. **The earnings of an injured employee on the date upon which an accident occurs or the date upon which the employee becomes disabled from work due to an occupational disease will be used to calculate the average monthly wage**.

J. Michael Livermore, Alternative Service Concepts

Re: **Sec 6 of R007-06** does not sufficiently include the mandate of AB 58 to determine eligibility. It omits the substantive exclusion of eligibility for compensation when the employee pays the injured employee his or her regular hourly rate of pay for each hour of absence for the specified travel to medical treatment.

Suggest Sec 6 be amended with the following text or similar language expressing ineligibility for travel time compensation when the employer pays full wages for the travel time:

Sec 6. (A new section)

NAC 616C.52x Documentation an injured employee or employer is required to submit for the payment of compensation to the injured employee, method for determining the amount of compensation to the injured employee and definition of "place of employment" pursuant to NRS 616C.477.

1. In determining whether an injured employee is entitled to compensation pursuant to NRS 616C.477, the insurer shall:
    a. **Obtain documentation from the employer of the injured employee verifying whether or not the injured employee was paid his regular rate of pay by the employer for each hour that the injured employee was absent from the place of employment to receive medical treatment as specified in subsection 2 AB 58 [NRS 616C.477]**
        i. **If the employee is paid in accordance with subsection 2 of AB 58 [NRS 616C.477], the compensation provided for in subsection 1 of AB 58 [NRS 616C.477]] does not apply.**
        ii. **If the employee is not paid in accordance with subsection 2 or 3 of AB 58 [NRS 616C.477], the employer must issue the payment require or correct any payment already made to the employee to meet the requirement of NRS 616C.477 or the compensation provided for in subsection 1 of AB 58 [NRS 616C.477] shall be determined by the insurer in accordance with subsections 2 through 6 of this section.**

Also, **Sec 7 of R007-06** in amending NAC 616C.441 does not comport with the language of NRS 617.420, 617.445 and 617.060 and the decisions of the Nevada Supreme Court in the Oscar Howard case (2005) and in the Mirage v State Dept of Admin case (1994). We request Sec 7 be amended to adopt language indicating that the date of disablement (as defined in NRS 617.060) is the date upon which earnings are based for the calculation of the average monthly wage:

Sec 7. NAC 616C.441

1. The earnings of an injured employee on the date on which an accident occurs or the date of disablement (as defined in NRS 617.060) because of an occupational disease arising out of employment for which the employee is eligible for compensation pursuant to chapters 616A to 616D, inclusive of NRS, will be used to calculate the average monthly wage.

Sec 8 of R007-06: We do not believe amending NAC 616C.571 by removing limits on total reimbursement for voc rehab travel is appropriate or comports with NRS 616A.010 that requires: the quick and efficient payment of compensation to injured and disabled employees at a reasonable cost to the employers (emphasis added) …" Leaving the cap on mileage payment will continue to compel voc rehab counselors and injured employees to find reasonable and more feasible solutions to voc rehab issues instead of simply allowing limitless dollars to flow from employer's funds.

Possible DIR revision of Section 8, subsection 2, based on current mileage reimbursement rates, would read:

> For the entire period of a program of vocation rehabilitation, an insurer shall not reimburse an injured employee for more than **5,500 miles** for the costs of transportation of which
>
> (a) Not more than **2,000 miles** may be for costs incurred by the employee during the development of the program: and
>
> (b) Not more than **3,500 miles** may be for costs incurred during the period in which the employee participates in the program.

<u>Sandra Simon, Riviera Hotel & Casino</u>

We feel that giving checks directly to our employees is good employee relations. We are most interested in our relationship with them, not the convenience of their legal counsel. If they are physically unable to pick the check up, it is mailed, as we believe the injured worker's physical condition is of primary importance.

This appears to be an attempt by attorneys to come between injured workers and their employers. We do not believe that this is a regulation that warrants changing.

<u>Jack Dymond, President, Nevada Chapter of International Association of Rehabilitation Professionals</u>

There is a relatively small but significant group of workers who are in rural areas of the state who would benefit by being compensated for traveling from their remote locations to fully participate in medical and vocational rehabilitation. It appears that this proposed change in computing mileage for injured workers is a good compromise to existing regulations. The executive board of the Nevada Chapter of IARP support this change of regulations. Thank you for considering our position.

3. If the regulations were adopted without changing any part of the proposed regulations, a summary of the reasons for adopting the regulations without changes.

The Division did change the wording as suggested by the oral testimony during the workshop and hearing and the written comments submitted by the announced deadline .

Section 4 now adds "**pursuant to NRS 616B.021**" to address unauthorized access and confidentiality protection concerns.

Section 5 – NAC 616B.021 was changed in response to concerns about clarity in the original regulation instructions, the perceived need for written authority from the claimant and clear options in mailing checks to claimants. 1 (b) now reads: **"Upon receipt of written authorization of the claimant …"** And paragraph 2 begins: **"If authorized in writing by the claimant …"**

Finally, Section 7 is revised to reflect the comments of the participants.

Other suggestions that were not adopted were using insurer C207 forms to record the 50-mile travel benefit. The State of Nevada form D-24 has already been changed easily for this purpose.

Suggestions requiring that the form or some other document record that the injured employee declare that he or she was not also being paid for lost time from his/her employer or from some other source were judged unnecessary, if proper communication exists between the insurer and its employer clients.

Changes to the Small Business Impact are also unnecessary, despite the removal of the vocational rehabilitation mileage limit. As stated in the original Small Business Impact Statement disseminated with the Hearing Notice, more than 90 percent of Nevadans live and work in three municipalities: Clark and Washoe Counties and Carson City, in which vocational rehabilitation services are almost exclusively within a 50-mile radius—leaving fewer than 10 percent of Nevadans possibly eligible for this benefit under a combination of unlikely availability circumstances. The insurers will surely pass any negligible costs for this small pool of eligibles onto current policyholders.

4. The estimated economic effect of the adopted regulations on the businesses which it is to regulate, and on the public.

Adverse: The Division believes that there is an immediate adverse economic effect of the regulations on business. Insurers of employers located in rural areas that might qualify for this long-distance (minimum 50-miles one way) treatment benefit would incur increased costs that would most likely be passed along to policyholders. However, the Division anticipates no long-term adverse economic effect of the proposed regulations on affected employers or insurers. The regulations do increase fines or penalties that will not impact those businesses that continue to comply with Nevada's workers' compensation statutes and regulations. The regulations also do not impose any significant regulatory burdens associated with compliance.

The Division believes that there is no immediate adverse economic effect of the regulations on the public. The Division also believes that there is no long-term adverse economic effect of the regulations on the public. The regulations also do not impose any significant regulatory burdens associated with compliance.

Beneficial: The Division believes that the immediate beneficial economic effect of the regulations on business is minimal. The Division believes that the long-term beneficial economic effect of the regulations on business is also minimal. The regulations do increase fines or penalties. The regulations also do not impose any significant regulatory burdens associated with compliance.

The Division believes that there is no immediate beneficial economic effect of the regulations on the general public. However, economic benefits will be realized by those whose medical treatment meets the 50-mile minimum or whose vocational rehabilitation program also meets the 50-mile test. The Division also believes that there is no long-term beneficial economic effect of the regulations on the public. The regulations also do not impose any significant regulatory burdens associated with compliance.

5. The estimated cost to the agency for enforcement of the adopted regulations.

The Division estimates that the costs of the enforcing and administering this regulation will be minimal.

6. A description of any regulations of other state or government agencies, which the proposed regulations overlap or duplicate, and a statement explaining why the duplication or overlapping is necessary. If the regulations overlap or duplicate a federal regulation, the name of the regulating federal agency.

The Division believes that the proposed regulations do not overlap or duplicate any existing state, federal or other government regulations.

7. If the regulations include provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There is no federal regulation that regulates the same activity.

8. If the regulations provide a new fee or increase in existing fees, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulations do not provide for ongoing new fees or an increase in existing fees.