

**REVISED PROPOSED REGULATION
OF THE ADMINISTRATOR OF THE
DIVISION OF INDUSTRIAL RELATIONS OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R149-09

April 26, 2012

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

AUTHORITY: §1, NRS 616A.400; §§2-7, NRS 616A.400 and 616D.120.

A REGULATION relating to industrial insurance; adopting criteria by which the Division of Industrial Relations of the Department of Business and Industry may refuse to recommend approval of certain applications for a certificate of registration as an administrator; adopting provisions relating to untimely payments to injured workers; establishing certain provisions relating to employee leasing companies; 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:

1. The Division may refuse to recommend for final approval an application for a certificate of registration as an administrator pursuant to subsection 3 of NRS 683A.08524 because:

(a) A principal of the applicant was formerly a principal of a third-party administrator or insurer which has an outstanding debt owing to the Division or an injured employee;

(b) The information in the application reveals that the applicant does not maintain, based on the experience, caseload and number of clients of its adjuster, a sufficient number of experienced and qualified persons to properly administer claims; or

(c) Any other reason the Division determines may hinder the prompt and efficient payment of compensation to injured employees.

2. As used in this section:

(a) "Debt" includes, without limitation, an administrative fine, a benefit penalty or a penalty imposed pursuant to subsection 4 of NRS 616C.065.

(b) "Principal" means an owner, manager, officer, proprietor or any other person having a significant degree of control over the administration of claims.

Sec. 2. Chapter 616D of NAC is hereby amended by adding thereto a new section to read as follows:

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. 3. NAC 616D.315 is hereby amended to read as follows:

616D.315 For the purposes of paragraph (c) of subsection 1 of NRS 616D.120, to determine whether an insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* has unreasonably delayed payment to an injured employee of compensation found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS, the Administrator will consider:

1. The reasons given by the insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* for making the payment after the time set forth in paragraph (c) of subsection 1 of NRS 616D.120;

2. The efforts made by the insurer, organization for managed care, health care provider, third-party administrator , ~~{or}~~ employer *or employee leasing company* to make the payment within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, if any;
3. The date the payment was made;
4. Whether the amount of compensation due, or any portion of that amount, was unclear or ambiguous and whether the insurer, organization for managed care, health care provider, third-party administrator , ~~{or}~~ employer *or employee leasing company* took action or exercised reasonable diligence to clarify the uncertainty or ambiguity and to pay the compensation due within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, or at any time thereafter;
5. Whether the amount of compensation due, or any portion of that amount, was unknown or could have been determined through the exercise of reasonable diligence within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, or at any time thereafter;
6. Whether the insurer, organization for managed care, health care provider, third-party administrator , ~~{or}~~ employer *or employee leasing company* was advised, in writing, by the injured employee or his representative that payment of the compensation due could be delayed pending the outcome of any further negotiations relating to the compensation that was due;
7. 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;
8. Whether the delay in the payment of the compensation due, or any portion thereof, was 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 , ~~or~~ employer ~~or~~ *employee leasing company*; and

9. Any other circumstance which the Administrator deems relevant to determine whether a delay in the payment of compensation due was reasonable.

Sec. 4. NAC 616D.400 is hereby amended to read as follows:

616D.400 1. For the purposes of subsection 2 of NRS 616D.120 and except as otherwise provided in chapters 616A to 617, inclusive, of NRS, or in any regulation adopted pursuant thereto, an insurer, organization for managed care, health care provider, third-party administrator , ~~or~~ employer *or employee leasing company* commits a “minor violation” of any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or a regulation adopted pursuant thereto, if the violation is a single, unintentional violation and the insurer, organization for managed care, health care provider, third-party administrator , ~~or~~ employer *or employee leasing company* agrees, in writing, to correct the violation during the course of an investigation or audit conducted pursuant to those chapters.

2. Except as otherwise provided in this subsection, if an insurer, organization for managed care, health care provider, third-party administrator , ~~or~~ employer *or employee leasing company* agrees, in writing, to correct a single, unintentional violation during the course of an investigation or audit, the Administrator will issue a notice of correction for that violation. The Administrator will not issue a notice of correction pursuant to this subsection if the violation does not require correction or the correction is unnecessary or moot.

3. If an insurer, organization for managed care, health care provider, third-party administrator , ~~or~~ employer *or employee leasing company* does not agree, in writing, to correct a single, unintentional violation during the course of an investigation or audit, the Administrator

may impose an administrative fine in an amount not to exceed those amounts set forth in subsection 2 of NRS 616D.120 or order a plan of corrective action to be submitted to the Administrator, or both.

Sec. 5. NAC 616D.405 is hereby amended to read as follows:

616D.405 1. For the purposes of NRS 616D.120, an insurer, organization for managed care, health care provider, third-party administrator, ~~for~~ employer *or employee leasing company* commits an “intentional violation” of any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or any regulation adopted pursuant thereto, if he acts with purpose or design, otherwise acts to cause the consequences, desires to cause the consequences or believes that the consequences are substantially certain to result from the violation.

2. The Administrator may consider two or more violations of the same or similar provisions of chapters 616A to 617, inclusive, of NRS, or any regulations adopted pursuant thereto, as evidence of an intentional violation. If the Administrator determines that two or more violations constitute an intentional violation, the Administrator will impose an administrative fine as required by subsection 1 of NRS 616D.120 and, if appropriate, order a plan of corrective action to be submitted to the Administrator.

Sec. 6. 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 ~~[\$1,625]~~ \$2,250 for each point assessed, but in no event will the amount of the benefit penalty be greater than ~~[\$37,500.]~~ \$50,000.

Points assessed for physical harm:

Temporary minor harm	2 points
Temporary major harm.....	5 points
Permanent minor harm	5 points
Permanent major harm	10 15 points
Death	20 25 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]

Average number of claims handled in the past 3 years of 4,000 or more

<i>Five or less prior violations.....</i>	<i>0 points</i>
<i>Six prior violations</i>	<i>1 point</i>
<i>Seven prior violations.....</i>	<i>2 points</i>
<i>Eight prior violations.....</i>	<i>4 points</i>
<i>Nine or more prior violations.....</i>	<i>6 points</i>

Average number of claims handled in the past 3 years of less than 4,000 but more than

1,500

<i>Three or less prior violations</i>	<i>0 points</i>
<i>Four prior violations</i>	<i>1 point</i>
<i>Five prior violations</i>	<i>2 points</i>
<i>Six prior violations</i>	<i>4 points</i>
<i>Seven or more prior violations.....</i>	<i>6 points</i>

Average number of claims handled in the past 3 years of 1,500 or less

<i>One prior violation</i>	<i>0 points</i>
<i>Two prior violations</i>	<i>1 point</i>
<i>Three prior violations</i>	<i>2 points</i>
<i>Four prior violations</i>	<i>4 points</i>
<i>Five or more prior violations</i>	<i>6 points</i>

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 , ~~for~~ employer ~~;~~ *or employee leasing company*, the Administrator will ~~consider~~ :

(a) *Consider* only those fines and benefit penalties imposed pursuant to paragraphs (a) to (e), inclusive, ~~[and]~~ (h) *and* (i) of subsection 1 of NRS 616D.120 ~~[in the immediately preceding 5 years.]~~ *using the 3 most recent complete years of available data.*

(b) *Not consider those benefit penalties imposed pursuant to paragraph (b) of subsection 3 of NRS 616D.120.*

5. *To determine the average number of claims handled in the past 3 years, the Administrator will consider the 3 most recent complete years of available data.*

6. 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) *“Number of claims handled” means the total number of claims accepted, denied or reopened during a one-year period.*

(d) “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)**~~ **(e)** “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)**~~ **(f)** “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)~~ (g) “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)~~ (h) “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. 7. NAC 616D.415 is hereby amended to read as follows:

616D.415 Except as otherwise provided in chapters 616A to 617, inclusive, of NRS, or in any regulation adopted pursuant thereto:

- 1. If the Administrator determines that:
 - (a) An insurer or third-party administrator has failed to comply or has complied in an untimely manner with any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or any

regulation adopted pursuant thereto, that requires the insurer or third-party administrator to make a determination regarding the acceptance or denial of a claim for compensation;

(b) An insurer or third-party administrator has failed to comply or has complied in an untimely manner with any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or any regulation adopted pursuant thereto, that requires the insurer or third-party administrator to make a payment of benefits to an injured employee;

(c) An insurer or employer has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616B.460 or 616B.461 or NAC 616B.124 to 616B.136, inclusive;

(d) An insurer, organization for managed care, provider of health care, third-party administrator, ~~or~~ employer *or employee leasing company* has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616A.475, 616B.006, 616B.009 or 617.357 or NAC 616A.410;

(e) A treating physician or chiropractor has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616C.020, 616C.040, subsection 7 of NRS 616C.475 or NRS 617.352, or any regulations adopted pursuant thereto, that require the treating physician or chiropractor to complete a claim for compensation; or

(f) An employer has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616C.045 or 617.354, or any regulation adopted pursuant thereto, that require the employer to complete a report of industrial injury or occupational disease,

↪ and the Administrator determines that the violation was not an intentional violation, the Administrator may impose an administrative fine in an amount not to exceed those amounts set forth in subsection 2 of NRS 616D.120 or order a plan of corrective action to be submitted to the Administrator, or both.

2. If the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* has committed two or more violations of the same or similar provisions of chapters 616A to 617, inclusive, of NRS, or any regulation adopted pursuant thereto, the Administrator may impose an administrative fine in an amount not to exceed those amounts set forth in subsection 2 of NRS 616D.120 or order a plan of corrective action to be submitted to the Administrator, or both.