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MEETING NOTICE AND AGENDA

Name of Organization: Legislative Committee on Workers' Compensation

*(Nevada Revised Statutes 218.5375)*

Date and Time of Meeting: Monday, November 30, 1998

9:30 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4401

555 East Washington Avenue

Las Vegas, Nevada

AGENDA

I. Opening Remarks

Senator Ann O'Connell, Chair, Legislative Committee on Workers' Compensation

\*II. Approval of Minutes from the Meetings of September 30, 1998, and October 28, 1998

\*III. Report on Proposals Regarding Physical Therapy Care for Injured Employees

Lynn Maguire, President-Elect, Nevada Physical Therapy Association

\*IV. Report Regarding Proposed Amendment to Permanent Total Disability Provisions of Chapter 616C of *Nevada Revised Statutes* (NRS) Concerning Application of "Odd-Lot Doctrine"

Leslie Bell, Director, CDS of Nevada, Inc.

\*V. Report Regarding Proposed Formula for Distribution of Third-Party Recoveries Between Insurer, Injured Employee, and Injured Employee's Attorney

Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada

\*VI. Follow-up Report Regarding Details of Previously Adopted Proposal to Specifically Allow Use of Rolling Wrap-Ups, Owner-Controlled Insurance Programs (OCIPs), and Contractor-Controlled Insurance Programs (CCIPs)

Sam McMullen, McMullen Strategic Group

\*VII. Report Regarding Previously Adopted Proposal on Coverage for Correctional Officers Who Are Exposed to Contagious Diseases

Susan Dunt, Workers' Compensation and Safety Manager, Risk Management Division, Department of Administration

### VIII. Public Comment

\*IX. **Work Session**—Discussion and Possible Committee Action Regarding Proposals Addressing the Following Topics (Work Session Document with the specific recommendations is attached):

#### A. Permanent Total Disability

1. Subrogation of Insurer to Rights of Injured Employees

#### C. Physical Therapy Care for Injured Employees

1. Workers' Compensation Fraud

5. Applicability of Chapter 617 of NRS

\*X. Discussion of Next Meeting Date

### XI. Adjournment

\*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division, Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Terrie Williams at 702/684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; Carson City Courthouse, 198 North Carson Street; Legislative Building, Room 1214, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway, and Grant Sawyer State Office Building, 555 East Washington Avenue.

## **WORK SESSION DOCUMENT**

### **Legislative Committee on Workers' Compensation**

#### ***Nevada Revised Statutes (NRS) 218.5375***

**November 30, 1998**

This "Work Session Document" has been prepared by the staff of the Legislative Committee on Workers' Compensation. It is designed as an outline to assist the Committee members in making decisions concerning recommendations to be forwarded to the 1999 Session of the Nevada Legislature.

The document contains a summary of recommendations which have been presented to the Committee during the hearing process with supplemental details provided to the staff as necessary. A citation for the source of each recommendation is noted at the end of the recommendation.

You may wish to note that the numbers used to identify proposals in this Work Session Document are consistent with the numbers used in previous Work Session Documents of the Committee.

#### **Permanent Total Disability**

1a. Amend *Nevada Revised Statutes* (NRS) 616C.435 to provide wage replacement benefits only up to age 70 for employees who are determined to be permanently and totally disabled under the odd-lot doctrine.

*Point of clarification: The insurer will determine whether an employee qualifies for permanent total disability (PTD) benefits under the odd-lot doctrine. This doctrine means that an employee may qualify for PTD benefits because the physical impairment and factors not related to the physical impairment, such as age, experience, training, and education, make the employee so handicapped that he will not be employable in a competitive labor market.*

(Leslie Bell, CDS of Nevada; Timothy E. Rowe, McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP; 8/10/98)

1b. Amend NRS 616C.435 by adding a new subsection to include the following concept:

Except as provided in subsection 1, in no case may an insurer make a determination that an injured employee is permanently and totally disabled unless a physician has indicated in writing to the insurer that the preponderant cause of the injured employee's inability to effectively compete in the labor market is an industrial injury or an occupational disease.

(Leslie Bell, CDS of Nevada; 11/16/98)

### **Subrogation of Insurer to Rights of Injured Employees**

4. Amend NRS 616C.215 to designate a formula for the distribution of a recovery obtained by an injured employee from a third party or a formula for the division of attorneys' fees and costs incurred by an injured employee to obtain a recovery from a third party when an insurer is subrogated to the rights of an injured employee against a third party.

(Leslie Bell, CDS of Nevada; Timothy E. Rowe, McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP; 8/10/98)

### **Physical Therapy Care for Injured Workers**

8. Make the following changes in NRS relating to the approval or denial by insurers of physical therapy services to injured workers:

b. Enact a provision in NRS to provide that if treatment ordered by an injured worker's treating physician is not authorized by a claims examiner at an insurer or MCO, the injured worker may request a second medical opinion by a physician employed by or under contract with the insurer or MCO and that physician will make the determination regarding treatment.

(Lynn Maguire, President-Elect, Nevada Physical Therapy Association; 9/17/98)

11. Enact a provision in NRS to allow an injured worker who has been referred to physical therapy treatment by a physician to receive treatment from the physical therapist of his choice, or the physical therapist recommended by the injured worker's treating physician even if the physical therapist is not a provider in the network of the insurer or the managed care organization (MCO) that provides coverage to the injured worker, if the therapist agrees to the terms of the contract of the insurer or MCO. An insurer would be required to pay for physical therapy services for an injured worker if the physical therapist agrees to the terms of the insurer's contract or MCO contract in cases in which the physical therapist is not a provider in the insurer's or MCO's provider network.

(Lynn Maguire, President-Elect, Nevada Physical Therapy Association; 9/17/98)

### **Workers' Compensation Fraud**

Amend Recommendation 29 (from Summary of Recommendations) approved by the Legislative Committee on Workers' Compensation at its meeting on June 24, 1998, to specify that the penalty for an injured worker falsely certifying that he has been continually disabled for the 14 days prior to the date of the check extends to injured workers receiving benefits pursuant to Chapter 617 of NRS.

29. Add a new provision to NRS that states:

Every check issued by an insurer for workers' compensation benefits shall include the following restrictive endorsement:

By signing this check for temporary disability, permanent total disability or rehabilitation maintenance benefits, I hereby certify under penalty of perjury that I have been continuously disabled and unable to work in any occupation for the 14 days prior to the date of this check. I understand that any false statement to obtain benefits is a crime, punishable by up to a category D felony pursuant to NRS 616D.300.

Once such a check is issued, endorsed, and/or negotiated, it creates a rebuttable presumption that the named claimant received, endorsed, and/or negotiated the check.

*Amend NRS 616D.300 to add reference to chapter 617.*

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98; support expressed by Kevin Higgins; 5/28/98)

### **Applicability of Chapter 617 of NRS**

Amend provisions of Chapters 616A to 616D, inclusive, of NRS and other provisions of NRS to ensure that references to Chapter 617 ("Occupational Diseases") are included in all appropriate provisions. The addition of references to Chapter 617 would be made to clarify and only where it appears to be the original intent of the provision and not where it would create a substantive change or expansion of a provision.