

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Committee on Workers' Compensation

(Nevada Revised Statutes 218.5375)

Date and Time of Meeting: Wednesday, September 30, 1998

9:30 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4401

555 East Washington Avenue

Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting, and other persons may observe the meeting and provide testimony, through a simultaneous video conference conducted at the following location:

Legislative Building

Room 1214

401 South Carson Street

Carson City, Nevada

A G E N D A

I. Opening Remarks

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

*II. Approval of Minutes of the Meeting of May 28, 1998

*III. Progress Report on Three-Way Insurance from the Division of Insurance

James Jeppson, Division of Insurance

A. Regulations Adopted Related to the Residual Market Under Three-Way Insurance

B. Filing of Rates for Three-Way Insurance by the National Council on Compensation Insurance

*IV. Report and Recommendations from the Three-Way Task Force

Roger Bremner, Administrator, Division of Industrial Relations

A. Possibility of Using Employees Laid Off by the Employers Insurance Company of Nevada to Staff the Information System for Three-Way Insurance

B. Frequency of Requirement to Report Information to the Division of Industrial Relations for

Private Carriers, Self-Insured Employers, Associations of Self-Insured Employers, and the Employers Insurance Company of Nevada

*V. Recommendations from the Voluntary Working Group on Owner-Controlled Insurance Programs (OCIPs)

Jim Schober, Chief Operating Officer, Kaercher Insurance

Sam McMullen, The McMullen Strategic Group

*VI. Report and Recommendations Regarding Physical Therapy Services for Injured Workers

Lynn Maguire, President-Elect, Nevada Physical Therapy Association

VII. Public Comment

*VIII. **Work Session**—Discussion and Action Regarding Recommendations on the Following Topics (Work Session Document with the specific recommendations is attached):

A. Workers' Compensation Coverage and Benefits

B. Qualifications of Associations of Self-Insured Employers

C. Owner-Controlled Insurance Programs

D. Three-Way Insurance

*IX. Discussion of Next Meeting Date

X. 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 of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Susan Furlong Reil, 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 Administrative Services, 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

September 30, 1998

The following "Work Session Document" has been prepared by the staff of the Legislative Committee on Workers' Compensation. Organized by topic, it is designed as a working document to assist the members of the Committee in making decisions during the work session.

This "Work Session Document" contains the recommendations presented to the Committee or held for further discussion at its meeting of August 10, 1998, as well as recommendations received through written correspondence. A citation concerning the source of each recommendation is noted at the end of the recommendation.

WORKERS' COMPENSATION COVERAGE AND BENEFITS

Permanent Total Disability

1. Amend *Nevada Revised Statutes* (NRS) 616C.435 to limit the compensation of employees nearing retirement for permanent total disability (PTD) if there are other factors in addition to the industrial injury contributing to the PTD (odd-lot doctrine).

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

Coverage of Heart Disease for Retired Firefighters and Police Officers

2. Clarify NRS to limit the compensation for heart and lung disease of firefighters and police officers that occurs after the employees have retired or are no longer working as firefighters or police officers:

a. Repeal NRS 617.455(7) and 617.457(7) which provide that a firefighter or police officer who is partially disabled as a result of heart or lung disease may elect to receive permanent total disability benefits if the person is incapable of performing as a firefighter or police officer.

b. Amend NRS 617.455 and 617.457 to provide that the presumption in subsection 1 applies to disabling heart or lung disease diagnosed after the termination of the person's employment if the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying three months by the number of full years of his employment. For example, an employee with 30 years of service would have continued eligibility for compensation of heart and lung disease for 90 months (7.5 years) after the employee retires. Nevada law currently provides that diseases of the heart and lung of certain persons who have been employed as firefighters or police officers are presumed to arise out of and in the course of employment.

c. Amend NRS 617.455(6) and 617.457(6) to add the following provision. These subsections currently state that failure to correct predisposing conditions which lead to heart or lung disease as ordered by a physician in the annual examination excludes the employee from benefits if the correction is within the ability of the employee.

Such annual physical examinations shall be required during the periods of extended eligibility provided in section 1. Failure to comply with the requirements for physical examinations shall result in the suspension of eligibility for the benefits provided by this section.

d. Amend NRS 617.455 and 617.457 to provide that if a person is entitled to benefits under subsection 1 or 2, the firefighter or police officer shall not be entitled to temporary total disability benefits pursuant to NRS 616C.475. This provision would only apply to cases in which the person is retired or otherwise separated, voluntarily or otherwise, from employment or volunteer status as a police officer or firefighter before the claim is opened.

e. Amend NRS 617.455 and 617.457 to provide that the last injurious exposure rule may be used to determine the insurer responsible for payment of benefits to the police officer or fireman who has retired or otherwise separated from employment as a police officer or fireman. The last injurious exposure rule imposes liability on the insurer of the employer that last exposed a person to conditions that could have caused the occupational disease.

f. Amend NRS 617.455 and 617.457 to provide that any benefits payable pursuant to these sections shall be based upon the average monthly wage as of the date of disablement.

i. Average monthly wage for retirees could be based on the amount of the retirement benefits

received by the retired firefighter or police officer.

OR

ii. Average monthly wage could be deemed to be zero for retired firefighters or police officers if "wage" is defined to not include retirement benefits.

(Wayne Carlson, Public Agency Compensation Trust, 9/23/98; Vicki Robinson, City of Las Vegas, 8/10/98)

Coverage of Correctional Officers

3. Amend NRS to provide workers' compensation coverage for state correctional officers who are exposed to contagious diseases in the course of their normal duties, including responding to physical altercations involving inmates.

(Ed Flagg, Nevada Corrections Association, 8/10/98)

Subrogation

4. Amend NRS 616C.215 to designate a formula for the distribution of a recovery obtained from a third party that would provide one-third of the recovery to the plaintiff, one-third to the plaintiff's attorney, and one-third to the workers' compensation insurer up to the amount of the lien of that insurer.

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

Hearings and Appeals Process

5. Amend NRS 616C.340(2) as follows to clarify that an appeals officer must have not only been licensed to practice in Nevada for two years, but must have experience in workers' compensation claims and proceedings:

2. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state *and have actively practiced law in actions related to claims for compensation* for at least two years.

(Sam McMullen, McMullen Strategic Group, 4/7/98 and 8/10/98)

6. Amend NRS to make the ethical restrictions included in the judicial code applicable to Hearing Officers and Appeals Officers.

(Sam McMullen, McMullen Strategic Group, 4/7/98 and 8/10/98)

Physical Therapy Care for Injured Workers

7. Require insurers and managed care organizations (MCOs) to cover an initial physical therapy evaluation and 12 physical therapy visits without the injured employee or physical therapist having to obtain prior authorization. Nevada law currently provides for an initial evaluation and six physical therapy visits without prior authorization.

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

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

a. Amend NRS to clarify that an insurer or MCO has the authority to exceed the minimum standards of care adopted by the Division of Industrial Relations (DIR) pursuant to NRS 616C.250 for physical

therapy treatment.

b. Amend NRS to provide that treatment ordered by an injured worker's treating physician may only be denied by an insurer or MCO if a physician employed by or under contract with the insurer or MCO makes the determination to deny care.

c. Amend NRS to prohibit the denial of physical therapy visits following surgery on the basis that the allowed number of physical therapy visits were used prior to surgery. Require that a new initial evaluation and treatment plan for physical therapy be completed following surgery for an injured worker who has received physical therapy services and has surgery.

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

9. Clarify NRS to provide that an injured worker who sustains an injury involving multiple body parts must be allowed to have evaluations and physical therapy treatment for each of the multiple injuries. Require that an evaluation and treatment plan be completed for each injured body part.

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

10. Urge, by letter from the Committee, the Commissioner of Insurance to enforce Nevada's laws and regulations requiring timely payment of health care providers by insurers and managed care organizations.

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

11. Enact a provision in NRS to allow an injured worker who reasonably requires physical therapy treatment to receive treatment from the physical therapist of his choice, or the physical therapist recommended by the injured worker's treating physician, if the physical therapist is not a provider in the network but agrees to the terms of the contract of the insurer or managed care organization(MCO) that provides coverage to the injured worker. 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)

QUALIFICATIONS OF ASSOCIATIONS OF SELF-INSURED EMPLOYERS

12. Amend NRS 616B.350(5)(h) to read as indicated below and make any other changes in NRS necessary to accomplish the purpose stated below:

A reviewed financial statement prepared by an independent certified public accountant for each proposed member of the association or evidence of the ability of the association or its proposed members to provide a solvency bond pursuant to section 3 of NRS 616B.353, unless an association of self-insured public or private employers has been certified by the commissioner of insurance for at least three consecutive years, at which time the association of self-insured public or private employers may adopt internal policies governing the proof of financial solvency of each proposed member.

(Mary Lau, Retail Association of Nevada, 4/7/98; Sam McMullen, McMullen Strategic Group, 8/10/98)

13. Amend NRS 616B.386 to add the following subsection:

After an association of self-insured public or private employers has been certified by the commissioner of insurance for at least three consecutive years and has a tangible net worth of \$5,000,000 and at least 15 members, the association of self-insured public or private employers may adopt internal policies setting the tangible net worth and manual premium for each new member.

(Mary Lau, Retail Association of Nevada, 4/7/98; Sam McMullen, McMullen Strategic Group, 8/10/98)

OWNER-CONTROLLED INSURANCE PROGRAMS (OCIPS)

NOTE: On June 24, 1998, the Legislative Committee on Workers' Compensation approved a proposal to form a voluntary working group to make recommendations regarding the regulation of owner-controlled insurance programs (OCIPs). The OCIP working group submits the following recommendations for consideration by the Committee:

Contract Requirements

<p>14. Enact a provision in NRS to require that a contract for a wrap-up, OCIP, or contractor-controlled insurance program (CCIP) <u>minimally address the following general items:</u></p>	<p>OR</p>	<p>15. Enact a provision in NRS to require that a contract for a wrap-up, OCIP, or CCIP <u>include the following specific requirements:</u></p>
<p>a. The definition of the project site covered by the contract;</p>		<p>a. The project site must include all operations in the course or scope of the OCIP project, including all related off site operations;</p>
<p>b. The safety program;</p>		<p>b. The owner, general contractor, or insurer must develop and implement a safety program that includes: minimum safety standards; safety meetings; safety training; site inspections; advising subcontractors on special hazards; and investigation of serious injuries;</p>
<p>c. The insured status of the owner, construction manager, general contractor, and subcontractors as additional insureds or named insureds</p> <p>(NOTE: A named insured is</p>		<p>c. The owner, construction manager, general contractor, and all subcontractors working on the project must be listed as named insureds (NOTE: A named insured is specified as the insured in an insurance policy. A business added to a policy, other</p>

specified as the insured in an insurance policy. A business added to a policy, other than the named insured, is considered an additional insured);		than the named insured, is considered an additional insured);
d. Claims administration;		d. The owner or general contractor must be designated as responsible for loss control and claims handling programs, including that the owner, general contractor, or their representatives must sign the C-3 form.
<i>(no equivalent provision proposed)</i>		e. Penalties for failing to comply with the safety plan and claims procedures;
f. Terms and conditions of coverage;	Same	f. Terms and conditions of coverage;
g. Insurance for completed operations and product coverages for a minimum of three years, except for residential projects, which would be required to have five years of completed operations and product coverages.	Same	g. Insurance for completed operations and project coverages for a minimum of three years, except for residential projects which would be required to have five years of completed operations and project coverages.

16. Clarify in NRS that contractors must have separate workers' compensation coverage for work not on the project site, as defined in the contract.

17. Prohibit the withholding of periodic payments to subcontractors or members enrolled in a wrap-up, OCIP, or CCIP by the owner or general contractor if the subcontractor does not sign the C-3 form.

Review of Contract by the Division of Insurance

18. Enact a provision in NRS requiring prior filing and approval of all contracts for wrap-ups, OCIPs, and CCIPs with the Division of Insurance before commencement of the wrap-up, OCIP, or CCIP. Require the Commissioner of Insurance to review and approve all contracts for wrap-up, OCIP, and CCIP agreements. The review and approval of the Commissioner would relate specifically to the insurer, policies, forms, rates, rating plans, funding plans (such as a deductible or deferred loss plan), coverages, site specific wording, and other insurance product matters. The Commissioner would have 20 days from receipt of the contract material to review and approve or disapprove the contract.

18. OR 19.

19. Enact a "file and use" provision in NRS that would require a contract for a wrap-up, OCIP, or CCIP to be filed with the Division of Insurance 30 days prior to the start of the project. The Commissioner of Insurance

would have 60 days after submission of the materials to review and approve or disapprove the contract. If no action is taken by the Commissioner within 60 days, the contract would be considered approved.

Participation in Wrap-Up, OCIP, or CCIP Agreements

20. Amend NRS to specifically allow the following entities to participate in or sponsor wrap-up, OCIP, or CCIP agreements: private companies, including firms undertaking to construct a project(s) in Nevada; public bodies; and utilities.

20. *OR* 21.

21. Amend NRS to specifically prohibit the use of wrap-up, OCIP, or CCIP agreements for public projects.

22. Enact a provision in NRS to allow self-insured employers, associations of self-insured employers, and captive insurance companies to provide workers' compensation and other insurance coverages for a wrap-up, OCIP, or CCIP. For the purposes of this provision, a captive insurance company would mean an insurance company set up by the owner of the project for purposes of writing a wrap-up, OCIP, or CCIP agreement.

Project Size

23. Do not set a minimum project size in statute. Allow market forces to determine the minimum size of projects for which a wrap-up, OCIP, or CCIP may be used.

23. *OR* 24.

24. For the period of July 1, 1999, to June 30, 2000, allow the use of wrap-up, OCIP, or CCIP agreements only for projects greater than \$200 million in project cost. The minimum project size would then be reduced to \$100 million effective July 1, 2000. This provision would only apply to site-specific wrap-ups, OCIPs, or CCIPs.

25. Amend NRS to specifically allow the use of rolling wrap-ups, OCIPs, or CCIPs. A rolling wrap-up is an agreement used for ongoing or continuous construction projects that are typically not site-specific or time limited.

Liability for Claims

26. Clarify in NRS that the insurer for the wrap-up, OCIP, or CCIP is liable for all workers' compensation claims related to injuries that arise in the course of employment on the project which are covered by the wrap-up, OCIP, or CCIP contract, including future claims filed after the completion of the project. Provide in NRS that a subcontractor or enrolled member of the wrap-up, OCIP, or CCIP may not be made liable for payment of claims, including claims filed after the completion of the project, related to the OCIP. An enrolled member is a company that is covered under the wrap-up, OCIP, or CCIP agreement under the definition of enrolled member. This provision would apply for the time period of the wrap-up, OCIP, or CCIP agreement and after the completion of the project, including in situations in which the insurer and/or owner of the project are no longer present or in business in the State of Nevada.

Experience Rating

27. Require in NRS that contractors and enrolled members retain and carry forward their own workers' compensation experience from wrap-up, OCIP, and CCIP projects. This provision would apply if the owner provides workers' compensation coverage for the project or if the contractor is issued a separate workers' compensation policy for the wrap-up, OCIP, or CCIP.

27. *OR* 28.

28. Require in NRS that if the owner of a project provides workers' compensation coverage for contractors and names the enrolled members of the wrap-up, OCIP, or CCIP as additional insureds, the owner retains the experience of the contractors on the project. The experience of a contractor and enrolled members on the wrap-up, OCIP, or CCIP would not carry forward to that contractor's individual experience or loss history. In the

case of self-insured employers or associations of self-insured employers participating in a wrap-up, OCIP, or CCIP, the experience of a contractor and enrolled members on the wrap-up, OCIP, or CCIP would not carry forward to affect any assessments or fines by DIR or the Division of Insurance that are based on the claims experience of the self-insured employers and associations of self-insured employers.

Education Requirements

29. Require in NRS the following education and notification related to a wrap-up, OCIP, or CCIP:

- a. The owner or general contractor must clearly notify subcontractors if a project is a proposed wrap-up, OCIP, or CCIP. This notification must be made in the document that requests bids in advance of the bid. The purpose of this notification is to allow subcontractors to bid the project with and without insurance costs, as well as with bid fees relating to the costs of loss control and claims administration.
- b. The pre-bid conference must at a minimum include the following information: the general concept of a wrap-up, OCIP, or CCIP; the requirement for contractors to carry separate workers' compensation coverage for work not performed on the "project site"; the basic safety plan; and claims administration procedures.

THREE-WAY INSURANCE

30. Amend Recommendation 25 (from the Summary of Recommendations) approved by the Committee at its meeting on August 10, 1998, to clarify that the information DIR may collect for the information system for three-way insurance is limited to the basic claims information identified in Attachment I. The amended recommendation would read as follows:

25. For the information system being developed for three-way insurance, enact legislation to allow the Division of Industrial Relations (DIR) to collect only basic claims information from associations of self-insured employers, the Employers Insurance Company of Nevada (EICON), private carriers, and self-insured employers as described in the materials provided in Attachment I. Specify that in carrying out its general responsibilities and regulatory activities, DIR may at a maximum collect only that information which is currently collected by DIR or the EICON. The frequency of the requirement to report [this] information must be the same for associations of self-insured employers, EICON, private carriers, and self-insured employers. Also, the Committee directed the Workers' Compensation Three-Way Task Force to: (1) study the option of using personnel that may be laid off by EICON under three-way insurance for staff positions the DIR may need related to this information system; and (2) review and recommend to the Committee a time frame for the frequency of the requirement to report this information.

Copies of the attachment are available through the Research Division of the Legislative Counsel Bureau. You may contact Susan Furlong Reil at (702) 684-6825 to obtain copies of the attachment.