

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Committee on Workers' Compensation

(Nevada Revised Statutes 218.5375)

Date and Time of Meeting: Thursday, May 28, 1998

8 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4412

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 4100

401 South Carson Street

Carson City, Nevada

AGENDA

I. Opening Remarks and Introductions

Senator Ann O'Connell, Chair

*II. Approval of Minutes of the Meeting of April 7, 1998

*III. Report Regarding the Payment of Medical Claims for Workers' Compensation to Physicians by Managed Care Organizations

Janice Pine, Director of Government Relations

Saint Mary's CompFirst

*IV. Report by the National Council on Compensation Insurance (NCCI) Regarding the Residual Market Plan Under Three-Way Workers' Compensation Insurance

A. Alice A. Molasky-Arman, Commissioner of Insurance

B. Diane Vural, Vice President, Residual Market Pool Operations

Karen Rodriguez, Director of Plan Administration

National Council on Compensation Insurance

***V. Reports Regarding the Structure and Operations of State Funds in a Competitive Three-Way Insurance Environment**

A. Report Regarding the Role and Regulation of the State Industrial Insurance System (SIIS) Under Three-Way Insurance

Lenard Ormsby, General Counsel

State Industrial Insurance System

B. Report on the Workers' Compensation Fund of Utah

Tom Callanan, Senior Vice President of Marketing

Workers' Compensation Fund of Utah

C. Report on the Colorado Compensation Insurance Authority

Gary Pon, President and General Manager

Colorado Compensation Insurance Authority

VI. Public Comment

***VII. Action Regarding the Recommendations in the Work Session Document (Attached) on the Following Topics:**

A. Three-Way Insurance

B. Regulation of SIIS Under Three-Way Insurance

C. Wrap-Ups and Owner-Controlled Insurance Programs (OCIPs)

D. Benefits and Administration of the Workers' Compensation System

***VIII. Discussion of the Regulation of Self-Insured Employers and Associations of Self-Insured Employers Under Three-Way Insurance**

Senator Ann O'Connell, Chair

Legislative Committee on Workers' Compensation

***IX. Directions to Staff**

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, Capitol Complex, Carson City, Nevada 89701-4747, or call Susan Furlong Reil, at 684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Bladell 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; Grant Sawyer State Office Building, 555 East Washington Avenue.

WORK SESSION DOCUMENT

Legislative Committee on Workers' Compensation

*Nevada Revised Statutes (NRS) 218.5375***May 28, 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.

The "Work Session Document" contains a summary of major recommendations which have been presented to the Committee in public hearings and correspondence through this date. A citation concerning the source of each recommendation is noted at the end of the recommendation.

It may be noted that the Legislative Committee on Workers' Compensation is required to meet quarterly in accordance with NRS 218.5375. Therefore, the chair of the Committee plans to have a second series of meetings in the fall of 1998, culminating in a second work session.

THREE-WAY WORKERS' COMPENSATION INSURANCE

1. Enact legislation to expand the types of employer groups who can pool and allow private carriers to offer fully insured workers' compensation coverage to employer pools or groups.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

(A pool is a purchasing group that obtains economies of scale not otherwise available to individual members. Group and association programs that pool to purchase workers' compensation insurance provide a means for small businesses to access comprehensive safety and loss control programs. A number of states allow insurers to write workers' compensation insurance for groups and associations of employers.)

2. Amend NRS 616A.485 to provide that the books, records, and payrolls of an employer insured by a private carrier must be open to inspection by the private carrier providing workers' compensation insurance to that employer.

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

(The State Industrial Insurance System [SIIS] has access to the books, records, and payroll of the employers it insures pursuant to NRS 616A.485. Also, the Division of Industrial Relations [DIR] has access to the books, records, and payrolls: for employers insured by SIIS and private carriers; for self-insured employers; and for associations of self-insured employers. Pursuant to NRS 616A.485, access to these records may be used to determine the accuracy of payroll, the number of persons employed, and any other information necessary for the administration of Chapters 616A through 617 of NRS.)

3. Repeal NRS 616B.012(6) which requires the Administrator of the DIR to collect certain information from insurers.

(Robert Ostrovsky; support expressed by James Wadhams; 4/7/98)

(The information is used by the Department of Taxation to verify returns for the business tax.)

4. Clarify in NRS that a managed care organization that is owned by or affiliated with a licensed workers' compensation insurer is required to be separately licensed by the Commissioner of Insurance to provide managed care services in the state.

(Robert Ostrovsky, 4/7/98)

(The intent of this recommendation is to ensure an appropriate separation between health care providers who treat injured workers and insurers who pay the claims.)

Competitive Rating Schedule

5. Amend provisions regarding scheduled rating and competitive rating issues to contain the same rating definitions. NRS 686B.1774, 686B.1779, 686B.176, and 686B.1769.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

6. Amend NRS 686B.1779 to clarify that the effective date of the competitive rating schedule is July 1, 2003, and **not** July 1, 1999.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

(Section 686B.1779 identifies the basis on which the Commissioner of Insurance may disapprove the rates filed by an insurer. Effective July 1, 1999 until July 1, 2003, the rates filed by an insurer must comply with the administrative rating schedule provided in NRS 686B.177.)

Qualifications for Associations of Self-Insured Employers

7. Amend NRS 616B.350(4)(h) regarding the qualifications of a self-insured association to allow a new member to join an association without providing to the Commissioner of Insurance a reviewed financial statement prepared by an independent certified public accountant. The amended provision would apply to self-insured associations that have at least 20 members or a combined net worth of \$5 million, and have an audited financial statement.

(Mary Lau, Executive Director, Retail Association of Nevada, 4/7/98)

(Current requirements for a new member to join an association would be maintained for associations with fewer than 20 members or a combined net worth of less than \$5 million.)

8. Repeal NRS 616B.386(3)(a) and 616B.386(3)(b) which require an employer to have a tangible net worth of at least \$500,000 or a reported payroll resulting in workers' compensation premiums of \$15,000 in order to join a self-insured association.

(Mary Lau, Executive Director, Retail Association of Nevada, 4/7/98)

Licensing of Claims Adjusters

9. Amend NRS to require claims adjusters who adjust workers' compensation claims to be licensed for that specific purpose by the Division of Insurance.

(William Matlack, 2/20/98)

REGULATION OF THE STATE INDUSTRIAL INSURANCE SYSTEM

UNDER THREE-WAY INSURANCE

Application of Certain Provisions of the Insurance Code to SIIS

NOTE: Recommendations 10 and 11 both address the application of the Insurance Code to SIIS. Recommendation 10

involves a blanket application of the Insurance Code to SIIS. In contrast, Recommendation 11 would apply only specific provisions of the Insurance Code to SIIS.

10. Apply Title 57 of NRS generally to SIIS by amending NRS 679A.100 which defines the term "insurer" to include SIIS, unless a provision explicitly exempts SIIS.

(Robert Ostrovsky, 4/7/98)

11. Make the following provisions of NRS specifically applicable to SIIS:

1. NRS Chapter 686A of the Insurance Code regarding fair trade practices;

(Assemblyman Lynn C. Hettrick; James Wadhams; 4/7/98)

2. NRS 616B.472 which provides that the Commissioner may suspend the authority of an insurer to provide industrial insurance;

(James Wadhams, 4/7/98)

c. Provisions of Chapter 683A of NRS which require the use of licensed insurance agents to market and sell workers' compensation insurance; and

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

d. NRS 679B.158 for the portion of the assessment which supports investigations and examinations to investigate fraud and ensure compliance with the fair trade practices act.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

(The assessment paid by an insurer, including SIIS, would be based on the lines of insurance written by the insurer. The assessment is currently used to fund (1) the fraud unit in the office of the Commissioner of Insurance; and (2) investigations and examinations.)

Confidentiality of Information

12. Amend NRS regarding the confidentiality of information of SIIS:

1. Make applicable to SIIS the portions of Title 57 of NRS (the *Insurance Code*) relating to the confidentiality of information so that SIIS and private carriers would have the same standards of confidentiality under three-way insurance.

(Senator Randolph J. Townsend, 5/20/98; James Wadhams, 4/7/98)

(For private carriers, pursuant to NRS 679B.190 of the Insurance Code, all documents in the possession of the Division of Insurance are considered public information unless deemed confidential by another code provision or they fall under one of the exceptions in NRS 679B.190. The exceptions include records relating to investigations or examinations that are ongoing or have not been finalized, other documents the Commissioner classifies as confidential because they were obtained from another governmental agency or from sources upon the express condition that they remain confidential, and medical records. Section 616B.014 of NRS currently governs the types of information of SIIS which are considered proprietary and confidential.)

b. Repeal NRS 616B.014(1)(c), (3)(b), and (4) which provide that proprietary information of SIIS is confidential;

(Robert Ostrovsky; support expressed by James Wadhams; 4/7/98)

c. Enact legislation to require that the official correspondence and records, including financial records, other than the files of individual claimants and policyholders, and the minutes and books of SIIS are public records and must be available for public inspection.

(Robert Ostrovsky, 4/7/98)

Additional Recommendation Regarding Fair Trade Practices

13. Specify that NRS Chapter 686A is the exclusive jurisdiction of the Commissioner of Insurance, except to the extent that workers' compensation benefits to claimants are administered by DIR. Clarify that the authority of DIR in the area of claims practices specifically relates to the responsibility of insurers to pay benefits to injured workers.

(James Wadhams, 4/7/98)

Exemption from Certain Provisions of the Insurance Code

14. Specifically exempt SIIS from the following provisions of NRS:

2. NRS 680A.140 requiring an insurer to deposit cash or securities in order to be authorized to transact insurance in Nevada;

(Assemblyman Lynn C. Hettrick, 4/7/98)

(A deposit for a new certificate of authority is on average \$200,000, according to the Commissioner of Insurance. A formula to determine the deposit for insurers providing workers' compensation coverage has not yet been established. It is expected that an insurer that already has a certificate of authority would be required to have an additional \$100,000 deposit in order to provide workers' compensation insurance.)

3. NRS 680A.060 stating that an insurer must have a certificate of authority to transact insurance in Nevada;

(Senator Randolph J. Townsend; Assemblyman Lynn C. Hettrick; James Wadhams; 4/7/98)

(Pursuant to NRS 680B.010, insurers must pay the following fees for a certificate of authority to the Commissioner of Insurance: a fee of \$2,450 for filing the initial application for a certificate of authority; a fee of \$283 for issuance of a certificate for one kind of insurance; and a fee of \$578 for issuance of a certificate for two or more kinds of insurance.)

4. NRS 680A.180(1)(a) and NRS 680B.010(1)(c) requiring an insurer to pay an annual continuation fee;

(Senator Kathy Augustine; Senator Randolph J. Townsend; James Wadhams; 4/7/98)

(Pursuant to NRS 680B.010 related to fees, insurers must pay to the Commissioner of Insurance a fee of \$2,450 for each annual continuation of a certificate of authority.)

5. NRS 680A.250(1) stating that an insurer must appoint the Commissioner as its attorney to receive service of legal process before the Commissioner may authorize that insurer to transact insurance in Nevada; and

(James Wadhams, 4/7/98)

(This provision ensures that the residents of Nevada can serve legal papers within Nevada to an insurer.)

6. NRS 692C.260 and 692C.270 requiring each insurer which is a member of an insurance holding company system to register with the Commissioner.

(Assemblyman Lynn C. Hettrick, 4/7/98)

15. Specifically exempt all workers' compensation insurers, including SIIS, from the following provisions of NRS:

1. NRS 679B.430(2) and 679B.450 relating to the fund for the stabilization of insurance costs;

(James Wadhams, 4/7/98)

2. NRS 680A.140 which requires an insurer to deposit cash or securities; and

(James Wadhams, 4/7/98)

3. NRS 679B.310 through 679B.370 which states that the Commissioner may hold a hearing to determine whether an insurer or an employee of an insurer has engaged in unsuitable conduct.

(James Wadhams, 4/7/98)

Review of SIIS Claims by the Commissioner of Insurance

16. Amend subsection 2(a) of NRS 616B.083 requiring SIIS to report to the Commissioner of Insurance regarding its current claims to read as follows:

Report to the commissioner [only] its financial statement and results of operations for [the account for current claims] all accounts in accordance with those accounting principles that are prescribed by the commissioner and applied to other insurers providing coverage for workers' compensation.

(Robert Ostrovsky, 4/7/98)

Board of Directors

17. Enact legislation to create a board of directors for SIIS, structured as follows:

(Robert Ostrovsky, 4/7/98, written correspondence, 5/11/98; support expressed by Lynn Grandlund, 4/7/98)

1. The SIIS shall be under the direct supervision of a board of directors composed of nine members, each of which shall be a policyholder or an employee of a policyholder of SIIS (the members of the board may not hold legislative or judicial positions in government). The board of directors shall consist of: three members appointed by the Majority Leader of the Senate in consultation with the Minority Leader of the Senate; three members appointed by the Speaker of the Assembly in consultation with the Minority Leader of the Assembly; and three members appointed by the Governor.
 - a. Board members shall serve for a term of four years and shall not be permitted to serve for more than two successive terms of appointment, except in the first year of the enactment of this law in which case one member from each class of appointments shall serve for two years and one member shall serve for six years.
2. The term of each regular appointment shall commence on July 1 of the appointment year and expire on June 30 following four years of service.
3. Vacancies on the board amongst members appointed by the Legislature shall be filled by the Legislative Commission. Such appointments shall expire at the conclusion of the next legislative session.
4. Service as a member of the board appointed by the Legislative Commission shall not be considered a term of appointment for the purposes of the limitation of two terms.
5. The board shall meet at least quarterly.

6. The duties of the board shall be those prescribed in NRS 616 and 617. The board may adopt rules and regulations, not inconsistent with the law, as required for the conduct of its business.
7. Board members shall be compensated by SIIS for meetings at a rate of \$80 per meeting day plus travel and per diem expenses.
 - i. The board shall elect a chairman from amongst its members. The chairman shall serve for a term of one year and shall not be permitted to serve more than two successive one-year terms. The chairman shall be responsible for the conducting and scheduling of all meetings.

18. If a board is established, amend NRS 616B.062 regarding the appointment and function of the manager of SIIS to read as follows:

1. The [governor] board shall appoint a manager to be in charge of the operation of the system;
2. The manager is the chief executive officer of the system and is responsible in consultation with the board for all duties of the system; and
3. The manager shall serve at the pleasure of the [governor] board.

(Robert Ostrovsky, 4/7/98)

19. If a board is established, amend NRS 616B.065 regarding the selection and classification of assistant managers of SIIS to read as follows:

1. The manager shall select assistant managers whose appointments are effective upon the confirmation by the board of directors. [who] Assistant managers are in the unclassified service of the state and are entitled to receive annual salaries fixed by the [manager] board.
2. The assistant managers shall serve at the pleasure of the manager, subject to the review of the board.

(Robert Ostrovsky, 4/7/98)

WRAP-UPS AND OWNER-CONTROLLED INSURANCE PROGRAMS (OCIPs)

20. Amend NRS 686A.200 and 686A. 220 to allow private carriers to write wrap-up, OCIP, and contractor-controlled insurance program (CCIP) coverage.

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

21. Clarify NRS to allow SIIS exclusively to write wrap-up or OCIP coverage for workers' compensation for public projects. Private carriers would be prohibited from writing wrap-up or OCIP coverage for public projects.

(Charles L. Halsey, J & H Marsh & McLennan, 4/7/98)

22. Appoint a voluntary working group to develop specific recommendations to the Committee regarding the regulation of OCIPs. The working group would consider topics including, but not limited to: the extent of coverage under an OCIP, including the "gray" areas of coverage; specific requirements of OCIPs, such as the size of the project that would qualify for an OCIP, safety plans, training, and the length of completed operation coverage (relates to general liability coverage); rating plans and rates for projects; claims handling; on-site health care; use of incentives to promote a safe workplace; reporting relationships of subcontractors and owners related to claims; and whether insurers should be required to offer a subcontractor continuing workers' compensation

coverage for a limited period of time (similar to Consolidated Omnibus Budget Reconciliation Act of 1985 [COBRA] requirements for health insurance) if all the employees of the subcontractor worked exclusively on the project covered by the OCIP. The working group would report back to the Committee by September 30, 1998, and would include at a minimum representatives of the Associated General Contractors, the insurance industry, insurance agents, labor, and the Commissioner of Insurance.

(Jim Schober, Kaercher Insurance, 4/7/98)

NOTE: Recommendation 22 is not intended to be included in a bill draft request.

BENEFITS AND ADMINISTRATION

OF THE WORKERS' COMPENSATION SYSTEM

Automatic Closure of Claims

23. Amend NRS 616C.235 to require insurers to notify certain claimants of the circumstances under which a claim may be closed automatically. This provision would apply for claimants who have received less than \$500 in medical benefits six months after an injury.

(Senator Ann O'Connell, 5/4/98)

24. Amend NRS to provide that a claim which is closed automatically pursuant to NRS 616C.235(2) may be reopened if medical benefits of less than \$500 were received by the injured worker as the result of a misdiagnosis.

(Senator Ann O'Connell, 5/14/98)

PPD Rating Evaluations

25. Amend NRS 616C.490(4) regarding rating evaluations for permanent partial disability (PPD) to clarify that PPD ratings must be done using objective medical findings only. Specify that impairments cannot be rated based solely on subjective pain.

(Linda Collins, Nevada Self-Insurers Association; Sam McMullen, McMullen Strategic Group; 4/7/98)

Benefits

26. Amend NRS 616C.505 to remove the provision which limits payment for the transport of the body of a deceased employee beyond the continental limits of the United States.

(Danny Thompson, AFL-CIO, 2/20/98)

Hearing and Appeals Process

27. Amend NRS to require that the performance of Appeals Officers (AO) be evaluated based on the criteria of timeliness and consistency. Timeliness would be measured at a minimum by determining the number of hearings per week held by the AO. Consistency would be measured by the number of decisions of the AO which are appealed and the number of appeals which are upheld by the district court.

(Senator Ann O'Connell, 5/7/98)

(This recommendation would provide information regarding the work load of the AOs and the correctness of decisions made at the AO level of appeal.)

28. Request that the Department of Administration study options to improve the effectiveness and accountability of the hearings and appeals process and report its findings to the Committee by September 30, 1998.

(Senator Ann O'Connell, 5/14/98)

Workers' Compensation Fraud

29. Enact legislation to require the following warning language to appear above the endorsement line on benefit or payment checks as a deterrent to fraud: "For your protection, Nevada law requires the following statement to appear on this form: 'Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal or civil penalties.'" The cost of this requirement would be shared by all insurers who write workers' compensation insurance in Nevada.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

30. Request that the Commissioner of Insurance and the Office of the Attorney General study and report back to this Committee by November 1, 1998, whether the various fraud units in their offices should be consolidated.

(James Wadhams, 4/7/98)

Subsequent Injury Funds

NOTE: If the recommendations to repeal all or certain of the subsequent injury funds are adopted, a mechanism to disburse any money in the funds would also need to be identified in order for a bill to be drafted.

31. Repeal the provisions of NRS related to all subsequent injury funds.

(James Wadhams, 4/7/98)

(Subsequent injury funds are established in statute for SIIS, self-insured employers, associations of self-insured employers, and private carriers. Subsequent injury funds were established to enhance employment opportunities for disabled workers and to protect employers from expensive claims resulting from additional injuries to workers with disabilities.)

32. Repeal NRS 616B.545 through 616B.560 to dissolve the subsequent injury fund for self-insured employers.

(Linda Collins, Nevada Self-Insurers Association; Sam McMullen, McMullen Strategic Group; 4/7/98)

33. Repeal NRS 616B.575 which establishes the subsequent injury fund for associations of self-insured employers.

(Jack McClaherty, 2/20/98)

Benefit Penalty

34. Amend NRS 616D.120 to increase the maximum benefit penalty for certain violations by insurers, organizations for managed care, health care providers, third-party administrators, or employers to \$200,000. The DIR would have discretion to apply a benefit penalty up to \$200,000 to account for the seriousness of the violation and the size of the employer.

(William Matlack, 2/20/98)

ADDITIONAL RECOMMENDATIONS BASED ON

TESTIMONY TO THE COMMITTEE ON MAY 28, 1998

The Committee may also discuss and take action on items presented in testimony at the May 28, 1998, meeting regarding the residual market plan, the regulation of SIIS under three-way insurance, the payment of physician claims for workers' compensation, and the regulation of self-insured employers and associations of self-insured employers under three-way insurance.