

BACKGROUND PAPER 97-6

**WORKERS' COMPENSATION IN NEVADA:
A PROGRAM IN TRANSITION**

Vance A. Hughey, Senior Research Analyst
Research Division
Nevada Legislative Counsel Bureau
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WORKERS' COMPENSATION IN NEVADA: A PROGRAM IN TRANSITION

INTRODUCTION

Nevada's workers' compensation system has undergone significant changes during the past three legislative sessions. Since 1990, when a legislative audit identified serious deficiencies in Nevada's workers' compensation program, the Legislature has enacted a number of measures designed to improve the efficiency and effectiveness of the agencies involved in administering the workers' compensation laws. More recently, several actuarial studies have identified significant financial problems at the State Industrial Insurance System (SIIS), Nevada's state-run workers' compensation insurer. Subsequent legislative action has, at least temporarily, averted financial collapse of that agency.

This document provides a brief history of workers' compensation insurance, examines the nature and magnitude of the recent financial difficulties experienced by SIIS, summarizes major reform legislation enacted by the Nevada Legislature since 1991, and discusses statutory changes recently proposed by the Legislative Committee on Workers' Compensation. A list of bill draft requests (BDRs) that contain the committee's proposals also is included in this document.

OVERVIEW OF INDUSTRIAL INSURANCE

Workers' compensation insurance is specialized insurance purchased by employers to provide medical care, disability compensation (indemnity) payments, and rehabilitation services for workers who are injured on the job or who contract occupational diseases in the course of their employment. Workers' compensation was the first social insurance system in the United States. It developed as a consequence of the high rate of industrial accidents in the nineteenth and early twentieth centuries.

Nineteenth century employers were required, under common law, to provide a reasonably safe place for their employees to work. If an injury occurred, however, and the employer did not voluntarily pay compensation, then the employee had to take his case to court. The litigation which arose out of this situation proved to be an unsatisfactory means of caring for injured workers.

Under the common law system that prevailed in Nevada's workers' compensation system prior to 1913, an employer had several defenses that made it difficult for an injured employee to collect damages. The employer might plead contributory negligence, suggesting that the employee was at fault to some degree. The employer might attempt to prove that the real fault was lodged with a fellow worker—the so-called fellow-servant doctrine. An employer also might apply what is called the "doctrine of assumption of

risk." Under this doctrine, the employee was assumed to have had knowledge that he was engaged in a dangerous occupation and, therefore, if he still chose to work in that occupation, he had to assume the known risks of being injured.

Early in this century, American policymakers looked to Europe where the idea of workers' compensation had originated in Germany in the 1800s and later was adopted in Great Britain, France, and other countries. Under a workers' compensation insurance program, the right to bring legal action against an employer on the grounds of negligence was exchanged for a system whereby benefits were paid for all injuries arising out of and in the course of employment. The costs of the work-related injuries were allocated to the employer, not because of any presumption that he was to blame for every individual injury, but because the inherent hazards of employment were considered to be a cost of production.

This "no-fault" approach to insuring employers soon became popular throughout the United States. Between 1911 and 1920, all but six states passed universal workers' compensation statutes. Eventually, the remaining states also enacted such laws.

Workers' Compensation in Nevada

Nevada was one of the first states to enact workers' compensation laws. The original industrial insurance act was adopted in 1913, and a complete revision of the act was drafted in 1947. The State's industrial insurance laws have been amended during every regular legislative session since 1913.

Recent legislative sessions have brought major changes to the statutes relating to workers' compensation. During the 1979 Session, self-insurance was authorized for qualified employers. The self-insurance option became effective on January 1, 1980. Prior to that time, the Nevada Industrial Commission (NIC) had been the only provider of workers' compensation insurance in the State.

The 1979 Legislature removed the hearings process for contested claims from NIC and placed it in a new Hearings Division within the Department of Administration. The Hearings Division is responsible for the hearings and appeals process.

In 1981, the Legislature completely reorganized the insurance delivery and regulatory structure of the workers' compensation system. Effective July 1, 1982, NIC ceased to exist and SIIS began operation as the state-run workers' compensation insurance carrier. Also on that date, the Department of Industrial Relations (DIR) began operation as the

primary regulator of the State's workers' compensation program.¹ The DIR regulatory umbrella includes SIIS and self-insured employers, the medical fee schedule, panels of treating and rating physicians, and the State's Occupational Safety and Health Administration (OSHA) responsibilities.

The Commissioner of Insurance reviews and approves SIIS's premium rates and is responsible for certifying self-insured employers who meet certain statutory qualifications. The Division of Insurance also regulates third-party administrators (TPAs) of self-insured programs and managed care organizations (MCOs).

In recent years, the number of self-insured employers has increased dramatically. For example, in 1988, fewer than 75 employers were self-insured. As of December 1, 1996, the Division of Insurance had on file 254 active certificates of individual self-insurance covering approximately 328,900 employees. The Division also had certified nine self-insurance groups (one public and eight private). These group self-insurance certificates represent approximately 327 individual former policyholders of SIIS and cover approximately 17,700 employees.

The Nevada Attorney for Injured Workers (NAIW),² a state agency separate from SIIS, represents claimants free of charge at the Hearings Division's appeals level, in the State's district courts, and before Nevada's Supreme Court.

Problems in Nevada's Workers' Compensation Program and Legislative Responses to the Situation

During the early- and mid-1980s, workers' compensation did not generate an inordinate amount of legislative interest in Nevada. Available information seemed to suggest that there were no major problems within the workers' compensation program. From 1984 through 1988, SIIS paid over \$50 million in dividends to policyholders. Additionally, from 1985 through 1988, premium rates were held constant. During the early- and mid-1980s, Nevada's compensation benefits were among the best in the Western States and premium rates were among the lowest.

Beginning in 1988, SIIS instituted the first in a series of premium rate increases. Also at about that time, injured workers became more vocal regarding their concerns about the manner in which their claims were being handled by SIIS and self-insured employers.

¹ The Commissioner of Insurance retained authority to approve premium rates charged by SIIS. In 1993, both the Department of Insurance and DIR were made divisions of the new Department of Business and Industry.

² Originally created in 1977 as the State Industrial Claimants' Attorney, the Legislature changed the agency's name to the Nevada Attorney for Injured Workers in 1991.

In 1989, the Legislature enacted Assembly Bill 1 (Chapter 856, *Statutes of Nevada 1989*). This bill directed the Legislative Auditor to conduct a performance audit of Nevada's workers' compensation program. The audit covered five aspects of the program:

- Medical Benefits to Injured Workers;
- Compensation and Other Benefits to Injured Workers;
- Hearings and Appeals Process;
- State Industrial Insurance System; and
- Department of Industrial Relations.

In 1991, the Legislature enacted Senate Bill 7 (Chapter 723, *Statutes of Nevada 1991*) to resolve many of the issues identified by the legislative audit. This measure reflected the Legislature's intent to reform the workers' compensation system in the following ways:

1. Lower Nevada's high rate of industrial injuries by promoting safety on the job;
2. Serve Nevada's injured workers by streamlining the process for filing, hearing, and appealing claims. The object was to make certain that injured workers and their health care providers received compensation as soon as possible. In addition, the injured workers were to receive appropriate medical care and rehabilitation to allow them to return to work as soon as possible; and
3. Serve employers by protecting against fraudulent claims and by returning injured employees to work as soon as possible.

This bill also established an interim Legislative Committee on Industrial Insurance. The purpose of this committee was to study Nevada's laws concerning industrial insurance and to prepare a report for submission to the Governor and the 1993 Legislature. Eight legislators were appointed as members of the committee. The committee held eight meetings, including a two-day work session, to obtain expert and public testimony. The committee considered 188 proposed recommendations. It adopted 62 of them covering a variety of topics including:

- Determination and payment of benefits;
- Medical care, compensation, and other benefits to injured workers;
- Fraud in workers' compensation;

- The organization of SIIS;
- Employer options for industrial insurance;
- Hearings and appeals of contested claims;
- Occupational safety and health; and
- Legislative oversight concerning industrial insurance.

Many of those 62 recommendations were subsequently adopted with the enactment of Senate Bill 316 (Chapter 265, *Statutes of Nevada 1993*), which is discussed later in this report.

SIIS's Financial Difficulties

At the April 9, 1992, meeting of the Legislative Committee on Industrial Insurance, SIIS announced that it was experiencing financial difficulty. The manager of SIIS reported that invested assets were being sold to cover current expenses. In the months following that meeting, a financial audit conducted for SIIS by KPMG Peat Marwick (independent auditors) concluded that SIIS's unfunded liability as of June 30, 1992, was approximately \$1.4 billion. This audit was followed by a Department of Insurance report that estimated SIIS's unfunded liability at \$2.2 billion. Much of the difference between the two estimates of the level of the unfunded liability was due to differences in accounting methods. KPMG Peat Marwick used "generally accepted accounting principles" while the Department of Insurance used the more conservative "statutory accounting principles."

Regardless of which figure more accurately reflected SIIS's financial condition at that time, it was clear that SIIS was on the brink of insolvency. Without large increases in premium rates to employers and/or major changes in Nevada's laws governing industrial insurance, SIIS officials expected the agency to be unable to pay claims by Fiscal Year (FY) 1996.

During the 1993 Session, the Legislature addressed many workers' compensation issues, including SIIS's financial difficulties.

After many months of hearings (at which testimony was received from employees, employers, health care providers, trial lawyers, agency officials, and others), S.B. 316 was enacted. This measure included provisions for:

- Implementation of managed health care in the workers' compensation program;
- Imposition of employer deductibles; and

- More aggressive pursuit of fraud perpetrated by employees, employers, and health care providers.

On November 15, 1994, SIIS released a report of its financial condition for FY 1994. According to the *Financial Statements*, the total accumulated deficit (unfunded liability) of SIIS decreased by \$44.1 million during the fiscal year that ended June 30, 1994. The accounting firm KPMG Peat Marwick conducted the audit of SIIS's financial records and concluded:

Although SIIS experienced income from underwriting activities during the year ended June 30, 1994, and the accumulated deficit decreased from \$2,097,124,000 at June 30, 1993 to \$2,053,047,000 at June 30, 1994, such accumulated deficit will need to be recovered from future revenues, operating efficiencies or from other resources to be provided to SIIS.

This improvement in SIIS's financial condition still left the agency with an unfunded liability of more than \$2 billion. However, it appears that the workers' compensation reforms enacted by the Legislature in 1991 and 1993 have helped to reverse SIIS's negative financial trends.

RECENT LEGISLATIVE REFORM MEASURES

Following are summaries of the most significant workers' compensation reform measures enacted during recent legislative sessions:

1991 Legislative Session

Senate Bill 7 (Chapter 723, *Statutes of Nevada 1991*)—This bill made substantial changes to the laws governing industrial insurance and occupational safety and health. Many of the provisions in this bill addressed specific concerns identified in a series of performance audits of the workers' compensation system by the Audit Division of the Legislative Counsel Bureau in 1990.

The measure contained a variety of strategies designed to speed up the processing of claims, the delivery of benefits, and payment of providers. Specific changes included case management for extended lost time claims, imposing mandatory fines for certain violations, requiring prompt payment of benefits, expediting hearings for contested claims, and improving communication among insurers, employers, medical providers, and injured workers.

The bill also addressed certain problem areas within the workers' compensation system. Specific guidelines were established for injured workers seeking vocational rehabilitation,

disability ratings, and lump sum settlements. Other sections addressed the provision of vocational rehabilitation services by SIIS, encouraged interagency agreements for these services, and provided specific guidelines for contracts with private vocational rehabilitation counselors. In addition, SIIS was required to conduct a study of mental stress claims and report to the 1993 Legislature.

Pursuant to the provisions which govern employer premium rates under SIIS, this act changed the maximum amount deemed paid by each employer to any one employee during the year for use in determining the total amount paid to employees for services performed during the year. This amount was increased from \$24,000 to \$36,000 per year.

Changes affecting providers included the addition of specially trained chiropractors to those able to provide disability ratings. The bill further provided for the establishment of a rotating list of rating physicians and chiropractors. In addition, DIR was required to adopt regulations concerning the review and revision of its fee schedule.

The bill divided the Division of Occupational Safety and Health into two divisions; the Division of Enforcement for Industrial Safety and Health and the Division of Preventative Safety. The Director of DIR was required to allocate sufficient funding to the Division of Preventative Safety to carry out educational and informational programs relating to safety and health in the workplace.

Certain employers with high rates of occupational injury or illness or high industrial insurance premium rates were required to establish safety programs to identify hazards and promote safety in the workplace. Incentives were created to encourage employers to provide the safest possible working environment for their employees.

The bill further required every employer to provide each newly hired employee with a document or videotape presentation setting forth the rights and responsibilities of employers and employees to promote safety in the workplace.

The bill strengthened regulatory oversight of self-insured employers, and included third-party administrators of industrial insurance. The Commissioner of Insurance was directed to certify any person who acts as a third-party administrator of the industrial insurance claims of a self-insured employer. In addition, the measure clarified the authority of DIR to regulate various matters within the workers' compensation system.

This act also prohibited a local government from issuing a business license without receiving an affidavit from the applicant that the business is covered by industrial insurance or is exempt from the industrial insurance provisions.

Finally, S.B. 7 established a Legislative Committee on Industrial Insurance to conduct an interim study to review the laws, regulations, and State agencies concerning workers'

compensation, to review the implementation of the provisions of this act, and to recommend any appropriate legislation to the 1993 Legislature. The Committee consisted of eight members (four legislators from each house), was limited to eight meetings, and was dissolved upon the convening of the 1993 Legislative Session.

1993 Legislative Session

Senate Bill 210 (Chapter 255, *Statutes of Nevada 1993*)—This measure clarified that a contractor commencing work with the State, or any political subdivision, must furnish certification of compliance with Nevada’s laws governing industrial insurance and occupational diseases to the state agency, political subdivision, or metropolitan police department in charge of letting the contract.

This bill also included officers of a metropolitan police department in the definition of police officer within the provisions regarding occupational diseases.

Senate Bill 316 (Chapter 265, *Statutes of Nevada 1993*)—Senate Bill 316 was a comprehensive measure that reformed Nevada’s workers’ compensation program and enacted cost savings provisions to deal with the financial situation of SIIS.

Some of the changes in the State’s industrial insurance laws included provisions relating to benefit decisions, fraud, limiting or reducing the payment of compensation benefits, limits on reopening claims, SIIS management procedures, and subrogation recovery.

Contained in S.B. 316 were other major revisions to the State’s workers’ compensation laws, including provisions to:

- Simplify and clarify the procedures for reporting an injury. Require employer notification to the insurer of an accident only if it has required treatment or compensation for industrial insurance.
- Clarify prohibited fraudulent acts and establish a special fraud unit in the Office of the Attorney General with authority to investigate and prosecute criminal fraud for industrial insurance by employees, employers, and providers.
- Strengthen various penalties and administrative fines and establish an administrative procedure for violations of industrial insurance laws and regulations.
- Authorize SIIS to charge uninsured employers three times the amount of premium that would have been due for the period the employer was without industrial insurance, but not to exceed six years.

- For two years, freeze the average monthly wage used for calculating the payment of temporary total disability benefits.
- Prohibit payment of compensation if an employee has a preexisting condition or sustains a subsequent injury that is not the primary cause of the resulting disability.
- Reduce compensation for permanent partial disabilities by revising the factor from 0.6 percent to 0.54 percent of the average monthly wage for each degree of impairment.
- Require an injured worker who disagrees with a permanent partial disability rating, and who requests a second determination, to choose the next rating physician in rotation from the list maintained by DIR. Furthermore, require hearing and appeals officers, when ordering new permanent partial disability ratings, to select rating physicians from the rotating list, unless the insurer and the injured worker agree otherwise.
- Extend various deadlines regarding the hearings and appeals process for contested claims and eliminate the deadline for hearing or appeals officers granting stays. In addition, provide that parties represented by legal counsel may stipulate to forego a hearing before a hearing officer and proceed directly to the appeals officer hearing. Furthermore, authorize the Director of the Department of Administration to appoint hearing officers who serve in the unclassified service and at the pleasure of the Director.
- Make it unlawful for any person who is not an attorney admitted to practice law in Nevada to represent an employee before an appeals officer. Limit the categories of persons who may be licensed to represent employers at hearings of contested cases.
- Require the State's workers' compensation laws to be interpreted according to the plain meaning of the statutes.
- Allow SIIS to contract with MCOs and establish requirements for the selection of MCOs by the manager of SIIS.
- Limit the ability of any MCO to provide care to not more than 25 percent of the employees insured by SIIS in Clark County and to not more than 34 percent of the employees insured by SIIS in Washoe County. Furthermore, require that SIIS contract with no fewer than seven MCOs in Clark County and no fewer than five MCOs in Washoe County. Prohibit MCO contracts based solely on the number of employees receiving services. Provide that the principal owner of an MCO in Clark or Washoe County, or any member of the owner's immediate family, may not be a principal owner of another MCO in the same county..

- Provide for independent evaluations of MCOs and other medical care providers. The manager of SIIS is required to contract with a private person to conduct evaluations of the utilization review procedures of MCOs.
- Freeze the medical fee schedule until October 1, 1995, unless SIIS signs contracts with MCOs or the Governor approves an increase in the fee schedule. Allow DIR to increase or decrease the medical fee schedule and authorize increases above the medical care component of the Consumer Price Index if approved by the DIR Advisory Council.
- Authorize self-insured employers to contract with MCOs.
- Require injured employees to choose their treating physician or chiropractor according to the terms of a contract which their insurer has made with an MCO.
- Provide that disputed decisions relating to accident benefits must, before going to an appeals officer, be appealed through the procedure for resolving complaints established by an MCO, if the insurer has contracted with an MCO.
- Prohibit, in most cases, a physician or chiropractor from referring an injured employee to a health service or facility in which a member of the physician's or chiropractor's immediate family has a financial interest. Exceptions are made for rural areas, certain arrangements with health maintenance organizations (HMOs), group practices, surgical centers for ambulatory patients, and in cases where the financial interest represents an investment in publicly traded securities.
- Limit stress as a compensable injury. Provide that stress may be compensable if the employee proves by clear and convincing evidence that he has a mental injury caused by extreme stress in time of danger and the employment was the primary cause of the injury. Stress is not compensable if it is caused by gradual mental stimulus.
- Limit rehabilitation maintenance payments, limit eligibility for vocational rehabilitation, and require the use of private and public rehabilitation counselors.
- Allow SIIS to provide vocational rehabilitation services if it can do so at a cost lower than the services available from private or public counselors, but prohibit SIIS from developing a majority of the vocational rehabilitation plans in any one year. Limit eligibility for vocational rehabilitation to injured employees who return to work at less than 80 percent of their past wage, and provide 90 days of job placement assistance for injured workers who possess marketable skills. Other vocational rehabilitation benefits are limited as follows:

1. Six months of benefits for an injured worker with a permanent physical impairment of less than 6 percent;
 2. Nine months of benefits for an injured worker with a permanent physical impairment of 6 percent or more, but less than 11 percent; and
 3. Twelve months of benefits for an injured worker with a permanent physical impairment of 11 percent or more.
- Extensions in the length of the vocational rehabilitation programs and benefits may be granted for exceptional circumstances.
 - Require that certified vocational rehabilitation counselors must supervise and review the work of counselors who are not certified.
 - Require each employer to establish a written safety program and implement its operation within 90 days and increase the maximum penalty from 3 percent to 15 percent of premium for violations of this requirement by employers insured by SIIS.
 - Require the SIIS manager to adopt a plan for reviewing employers who have excessive losses and allow the imposition of disincentives on such employers. Provide for procedures to terminate an employer's participation in such a plan.
 - Authorize groups of five or more public and private employers to form associations for self-insurance effective July 1, 1995.
 - Abolish the SIIS Board of Directors and allow the Governor to control SIIS until July 1, 1997. Require the Governor to report on the results of reforms to the Legislature early in the 1995 Session.
 - Require the SIIS to operate more like a private insurance company, remove it from the State Budget Act, and establish clearer and stronger regulatory controls by the Commissioner of Insurance.
 - For employers insured by SIIS, establish an employer-paid deductible of up to \$100 for the payment of medical benefits and provide an optional program for additional deductible coverage at reduced premium. Require employers who have excessive losses to pay a deductible of up to \$1,000 for medical benefits for their employees. Require SIIS to bill employers for the amount of any deductible that is owed to the system.

- Limit the application of the subsequent injury fund to self-insured employers and authorize SIIS to manage its own subsequent injury claims.
- Increase from \$400 to \$600 the monthly compensation for each person entitled to receive benefits for a permanent total disability or a death benefit for an industrial injury or occupational disease which occurred before July 1, 1980.

Senate Bill 522 (Chapter 622, Statutes of Nevada 1993)—This bill prohibited a health care practitioner from referring a patient for a service or goods to a health facility, medical laboratory, or commercial establishment in which the practitioner had a financial interest. Exceptions were provided for rural areas, certain arrangements with HMOs, group practices, surgical centers for ambulatory patients, lithotripsy services, and cases where the financial interest represents an investment in certain publicly traded securities. The bill defined group practice and specified criteria for the services provided, and the billing and compensation procedures used, by a group practice to qualify for the exception.

Assembly Bill 205 (Chapter 185, Statutes of Nevada 1993)—Prior to enactment of this measure, a contractor with employees hired in another state, but working temporarily in Nevada, was not required to obtain industrial insurance coverage in this State if the total cost of the construction project was \$250,000 or less and coverage was provided in the other state under a reciprocal coverage agreement. This bill removed that exemption. The law now requires all contractors with employees hired in another state, but working temporarily in Nevada, to obtain industrial insurance coverage in this State.

Assembly Bill 342 (Chapter 22, Statutes of Nevada 1993)—This measure repealed the existing law which set a maximum deemed wage of \$36,000 paid by each employer to any one employee for services performed during a year and reset the wage cap at \$27,000. However, the measure established a method to gradually increase the maximum reportable wage each year until the amount of \$36,000 is restored in 1996.

Assembly Bill 374 (Chapter 587, Statutes of Nevada 1993)—This bill was the “trailer” legislation to Senate Bill 316. This bill added certain provisions and made technical changes and corrections to S.B. 316.

The bill authorized licensed health care providers to form an organization for managed care under a common agreement to provide comprehensive medical and health care services for industrial injuries. Procedures and fees were specified for such providers to apply for and obtain permits from the Commissioner of Insurance. The Commissioner is required to evaluate and regulate these agreements.

Employers insured by SIIS were allowed to select an organization for managed care in a manner prescribed by the manager of SIIS and pursuant to the law.

Other changes contained in A.B. 374 included provisions to:

- Establish criteria for the manager to identify an employer with excessive losses.
- Clarify that any party to a dispute, not just the employee, may file a notice of appeal in cases involving MCO dispute resolution proceedings.
- Require that an application to reopen a claim be supported by medical evidence demonstrating an objective change in the injured employee's medical condition.
- Clarify the entitlement of compensation for dependents of an employee injured before July 1, 1980.
- Remove a conflict in the bill relating to the placement of hearing officers in the unclassified service.
- Authorize public agencies and nonprofit medical facilities to enter into cooperative agreements concerning industrial insurance.
- Clarify the primary cause language of the stress provision to relate to the course of employment rather than the conditions at the place of employment.
- Clarify that an insurer may, without limitation, extend an injured worker's program for vocational rehabilitation.
- Reduce the period of time pertaining to the criteria for wage reimbursement for a program of on-the-job training from 1 year to 90 days for the employer and 6 months for the employee.
- Correct the sanctions for fraud violators to apply to any person, not just a claimant, and to include liability for the costs of the Office of the Attorney General as well as the insurer.
- Delete an erroneous reference to certification under Chapter 695F of the *Nevada Revised Statutes* (NRS) for an MCO and revise the population threshold language for the provision of managed care services.
- Change the references from "evaluations" to "additional independent utilization reviews" and add certain prohibitions on such contracts by the manager.
- Clarify the procedure on final determinations for disputes.

- Allow an employer representative, in hearings of contested cases, to include a licensee who is not a third-party administrator.

Assembly Bill 375 (Chapter 199, *Statutes of Nevada 1993*)—This bill required the manager of SIIS to consider an employer's previous experience in another state in determining and fixing the employer's premium rates as a new business in this state.

Assembly Bill 474 (Chapter 581, *Statutes of Nevada 1993*)—This measure required that employee leasing companies obtain industrial insurance. The bill provided a procedure for those companies to apply to SIIS for a certificate of insurance. The applicant must provide information about the company, including the identity of the owners, if the company is a partnership, or the officers, if the company is incorporated. The applicant must also provide proof that it has paid the business tax, industrial insurance premiums, and unemployment compensation contributions, and that it has insurance coverage for any insurance plan that it offers to its employees. The applicant must also be a member of the National Staff Leasing Association.

Employee leasing companies are required to establish a written contract with client companies and to inform employees of their employment relationship. Employee leasing companies may not offer any self-funded insurance program or be self-insured for industrial insurance. If the leasing company fails to pay industrial insurance premiums or unemployment insurance contributions, the client company is jointly and severally liable.

Assembly Bill 586 (Chapter 273, *Statutes of Nevada 1993*)—This measure revised the provisions which limited the number of hours an employee may work in an underground mine within any 24-hour period. It provides that the existing 8-hour limit does not include time consumed for meals or travel into or out of the actual work site.

1995 Legislative Session

Senate Bill 458 (Chapter 587, *Statutes of Nevada 1995*)—This bill makes various changes to provisions relating to industrial insurance. The bill also limits the liability of an insurer or TPA who violates any provision concerning delivery of workers' compensation benefits, clarifies procedures for obtaining a stay of a hearing officer decision, and establishes time limits for issuing rulings on requests for stays.

The measure authorizes the establishment of separate boards to administer the subsequent injury funds for self-insured employers and associations of self-insured employers. Also, industrial insurance coverage for real estate brokers and salesmen is made elective. Corporate officer coverage, the definitions of an employee leasing company and a preexisting condition, and the provisions regarding the confidentiality of certain records are clarified.

The bill removes certain restrictions on the use of MCOs by SIIS, allowing SIIS to expand managed care to any county in the state and to use HMOs in addition to MCOs. However, the bill retains existing statutory provisions that allow an employee to choose another provider of health care if the employee's residence is not within a 20-mile radius of a provider of health care who has contracted with an MCO. The bill also clarifies procedures regarding resolution of disputes within an MCO.

The bill clarifies that an employee injured before January 6, 1994, whose employer's insurer has entered into a contract with an MCO, is subject to the provisions of that contract for the purpose of obtaining health care services for work-related injuries and occupational diseases. Additionally, an employee injured before January 6, 1994, whose employer's insurer has not entered into a contract with an MCO, must receive medical care from a physician or chiropractor who is willing to comply with the standards of care of a MCO or the standards of care adopted by the manager of SIIS.

The manager of SIIS is authorized to collect premiums on an annual basis in certain instances and may modify the formula used to determine if an employer has excessive losses. The manager also may adopt regulations regarding the application in Nevada of an out-of-state employer's claims experience.

Senate Bill 458 also makes several changes that affect benefits. The bill reduces the amount of money an insurer may deduct from an injured employee's permanent total disability compensation in certain cases where the injured employee has received a prior permanent partial disability (PPD) award. Additionally, the bill clarifies that the \$600 per month minimum benefit for persons who are permanently and totally disabled applies to the recipients while they are still alive as well as to their surviving dependents.

The measure clarifies that an injured employee may obtain a second PPD rating, but that the employee must select a physician from the rotating list of rating doctors. The employee also must pay for that second rating. The bill shortens the time frame for reporting injuries or occupational diseases to an employer from 30 to 7 days.

Senate Bill 458 clarifies that a rating evaluation must include an evaluation of the loss of range of motion, sensation, and strength as long as the second edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* is used. If a more recent edition is adopted by DIR that offers a choice of rating methods, the administrator must select the method to be used.

The measure also requires DIR to adopt regulations regarding the payment of permanent partial disability lump sums for persons injured after the effective date of this act.

The bill clarifies that if a program of vocational rehabilitation is unsuccessful, an injured employee may request a second program and that an insurer must approve the request if

good cause is shown. If the second program also is unsuccessful, an injured employee may request a third program and the insurer, with approval of the injured employee's employer, may approve the request. However, an insurer's decision to deny a third program is not appealable.

Other provisions included in S.B. 458 are designed to encourage a drug-free work place by making it easier to prove that a controlled substance was the proximate cause of an injury. In addition, S.B. 458 creates a legislative committee to study workers' compensation and establishes a surcharge formula to ensure the solvency of SIIS. The manager of SIIS is authorized to collect a solvency surcharge from employers under certain conditions.

The bill imposes the existing 3.5 percent insurance premium tax on SIIS and all private carriers that write workers' compensation insurance, effective July 1, 1999. All revenue derived from the premium tax on workers' compensation insurers must be dedicated to reduce SIIS's unfunded liability. If the Commissioner of Insurance determines that the premium tax revenue is no longer needed to ensure the solvency of SIIS, such revenue generated by workers' compensation insurers must be deposited in the State General Fund.

Assembly Bill 57 (Chapter 194, *Statutes of Nevada 1995*)—This measure extends workers' compensation benefits for heart and lung disorders to forensic specialists and correctional officers employed by the State's Mental Hygiene and Mental Retardation Division at facilities for mentally disordered offenders. This measure also provides these benefits to forensic specialists employed by the Department of Prisons.

Assembly Bill 59 (Chapter 127, *Statutes of Nevada 1995*)—This bill allows the Attorney General to determine the propriety of submitted evidence concerning an employer taking money out of an employee's paycheck to pay workers' compensation premiums. In addition, the measure provides that, if the amount of a benefit obtained or sought in a fraudulent manner is less than \$250, a person convicted of such an offense is guilty of a misdemeanor. The bill also allows the Attorney General, in workers' compensation fraud cases, to subpoena records from a financial institution without notifying the pertinent customer.

Assembly Bill 61 (Chapter 497, *Statutes of Nevada 1995*)—Further adjustments to the penalty provisions of the workers' compensation statutes were made with A.B. 61, including a new provision to allow certain fines to be paid directly to an injured worker, and more severe penalties to be assessed on insurers that violate prohibitions against certain claims management practices.

Assembly Bill 498 (Chapter 578, *Statutes of Nevada 1995*)—During the 1995 Session, the Legislature enacted several measures that provide employers with industrial insurance options. Group self-insurance was authorized in 1993, effective July 1, 1995. However,

the Legislature reviewed existing statutes and concluded that changes were necessary to clarify the types of businesses that would be allowed to join insurance groups. In addition, the Legislature clarified provisions regarding financial requirements of groups and their members, provided for regulation of solicitors, and made other changes to help ensure that self-insurance groups will be financially viable. These provisions are included in A.B. 498.

Assembly Bill 552 (Chapter 580, *Statutes of Nevada 1995*)—The Legislature also passed A.B. 552 to allow private carriers to offer workers' compensation insurance beginning July 1, 1999 (so-called three-way insurance). The four-year delay in establishing three-way insurance will give SIIS an opportunity to further improve its financial condition so that it can effectively operate in a competitive market. The delay also will give the Commissioner of Insurance time to implement any necessary regulatory controls.

Assembly Bill 587 (Chapter 544, *Statutes of Nevada 1995*)—This measure was enacted to enhance the ability of the Workers' Compensation Fraud Unit to investigate and prosecute employees, medical providers, and employers who engage in fraudulent activities. The bill also increases penalties for committing certain violations. In addition, A.B. 587 revises provisions relating to payment of an award for permanent partial disability in a lump sum to an employee who is the subject of a criminal action.

LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION

Under the provisions of Sections 120 through 123 of S.B. 458, the Legislature established a Legislative Committee on Workers' Compensation to review issues related to workers' compensation.³ Section 122 of S.B. 458 specifically allows the committee to:

- Study the desirability of establishing a preferred worker program to provide incentives for employers to hire injured workers; and
- Review the manner used by DIR to rate physical impairments of injured employees.

In addition, Section 122 of S.B. 458 requires that the committee:

- Review and study the financial condition of SIIS;
- Determine the extent of any apparent insolvency of SIIS; and

³ Sections 120 through 123 of S.B. 458 are codified as NRS 218.5375 through 218.5378.

- Establish a formula which will be applied to calculate a surcharge that is equal in amount to any deficiency in the cumulative amount of premiums paid by an employer who is subject to Section 33 of S.B. 458.

Section 33 of the bill⁴ requires that the surcharge, if imposed, be applied to:

- Each employer who was insured by the NIC or SIIS at any time during the period beginning on July 1, 1979, and ending on July 1, 1995;
- Each employer who is insured by SIIS at any time after July 1, 1995;
- Each self-insured employer; and
- Each association of self-insured public or private employers.

Beginning in November 1995 and concluding in December 1996, the committee held seven meetings to obtain expert and public testimony. Following are the dates and locations of each meeting of the committee:

- November 8, 1995;
- December 19, 1995;
- January 9, 1996;
- May 23, 1996;
- September 12, 1996;
- November 7, 1996; and
- December 3, 1996.

All of the meetings were held in Las Vegas and, except for the November 7, 1996, meeting, were video conferenced to Carson City.

During the course of its study, the committee reviewed existing laws and implementation of the workers' compensation legislation enacted by the 1995 Legislature. It received comments and recommendations from employers, injured employees, medical providers, vocational rehabilitation specialists, claimants' attorneys, TPAs, State agency executives,

⁴ Section 33 of S.B. 458 is codified as NRS 616B.110.

local government officials, and representatives of various self-insured employers, business groups, and labor organizations. In addition, the committee heard testimony by a national workers' compensation expert from the Workers Compensation Research Institute (WCRI) in Cambridge, Massachusetts.

Recommendations

At its December 3, 1996, work session, the committee considered 66 proposed recommendations. Following is a brief discussion of the issues regarding the 29 recommendations proposed by the committee. Adopted recommendations are enumerated below

Administration—During the course of its study, the committee received considerable testimony regarding administration of the workers' compensation program. For example, NRS 616C.020 provides that an injured employee must file a claim for compensation with the insurer within 90 days after an accident if either (a) the employee has sought medical treatment for an injury arising out of and in the course of his employment, or (b) the employee was off work as a result of an injury arising out of and in the course of his employment. Testimony was provided to the committee by employers and TPAs contending that 90 days was too long a period of time within which to seek medical treatment for an industrial injury. They suggested that if treatment was sought sooner, many medical conditions could be resolved more quickly and at a lower cost. To address this concern, the committee made the following recommendation to the 1997 Legislature:

1. Amend NRS 616C.020 to reduce from 90 the number of days within which an injured employee must seek medical treatment.

A company that assists employers seeking to become members of associations of self-insured employers expressed concern that insurers may be reluctant to provide certain information in a timely manner to a policyholder who is considering some form of self-insurance. The information referred to is required to be supplied to the Commissioner of Insurance for consideration of a policyholder's application for a certificate of self-insurance. The company that raised this issue felt that a delay in providing information might be used either to allow an insurer an opportunity to try to convince the employer to keep his coverage with the insurer, or to keep the policyholder account for as long as possible before it becomes self-insured. To minimize the chance of such delays occurring, the committee made the following recommendation:

2. Amend Chapter 616A of NRS to add a requirement that an insurer provide policy information to a policyholder within a reasonable period of time after such information is requested.

Representatives of employers and TPAs testified that a number of changes in certain provisions in the statutes would help streamline the administration of claims. The committee agreed with those representatives and adopted the following recommendations:

3. Allow electronic transmission of the Employer's Report of Industrial Injury or Occupational Disease (C-3 form), Employee's Claim for Compensation/Report of Initial Treatment (C-4 form), medical bills, and other documents.
4. Amend NRS 616B.018 and NRS 616C.020 to allow insurers greater access to medical and claim information from other insurers.
5. Amend NRS 616C.020 and NRS 616C.025 to clarify reporting requirements.
6. Amend NRS 616C.065 to clarify that an insurer shall take certain actions within 30 *working* days after being notified of an industrial accident and having *received a claim for compensation*.
7. Amend NRS 616C.235 to clarify that an insurer may dispose of a claim file six months after the date of automatic closure.
8. Amend NRS 616C.475 to clarify that a certification of disability shall not be given for dates that are prior to the date of the physician's examination of the injured employee.
9. Amend subsection 5 of NRS 616C.490 so that it is consistent with *Nevada Administrative Code* (NAC) 616C.103 which allows 30 days for an employer to notify the employee of the compensation to which he is entitled. The statute currently allows only 14 days.
10. Amend subsection 9 of NRS 612.265 to allow self-insured employers to participate in the program designed to identify persons who are simultaneously receiving unemployment compensation and workers' compensation benefits. Also, clarify in the statute that both the Employment Security Division of the Department of Employment, Training, and Rehabilitation and insurers have authority to investigate persons suspected of violating the law by simultaneously obtaining benefits under both the unemployment compensation and workers' compensation programs.

Compensation Payment—Subsection 1 of NRS 616C.060 requires that an insurer commence payment of an accepted claim within 30 days after the insurer has been notified of an industrial accident. However, subsection 3 of NRS 616C.475 requires that an insurer make the first payment within 14 working days after receiving the initial certification of disability. It was pointed out to the committee that an insurer may be required to make the first payment of temporary total disability before it has completed its

investigation of the compensability of a claim for compensation. If an insurer ultimately determines that the claim is not compensable under the Nevada Industrial Insurance Act, the injured employee will have received a payment to which he or she is not entitled. To prevent this situation from occurring, the committee made the following recommendation:

11. Correct a conflict between NRS 616C.060 and 616C.475 regarding the number of days within which an insurer must begin paying compensation.

A self-insured employer provided the committee with information regarding a case where one of its employees had falsified documents to obtain employment. The employee had used a false Social Security number and a forged resident alien card to complete her I-9 form at the time of employment. The employee filed a workers' compensation claim just prior to the discovery of the falsified documents. The employer argued that it is wrong for a person who has entered this country illegally and produced false documents in order to obtain employment to be able to receive workers' compensation benefits. The committee made the following recommendation:

12. Amend the law to disallow any person from receiving workers' compensation benefits if that person has falsified citizenship documents to obtain employment.

Coverage—A representative of the Schools to Careers Council explained to the committee that student participants in programs administered by a school district, a licensed private school, or a postsecondary educational institution designed to provide exposure, training, or work experience are not covered by workers' compensation insurance even though they are subject to risks similar to those faced by employees of the participating companies. In addition, when a teacher participates in an unpaid "externship," where he or she works at a business for a few weeks during the summer or between school sessions, the teacher cannot be covered by the school district's workers' compensation insurance. Because teachers in these circumstance also cannot be paid by an external source for such activities, they cannot be covered under the business's workers' compensation policy. In order to address these school to careers issues, the committee voted to have a separate bill drafted that will include the following recommendations:

13. Amend Chapter 616 to allow (but not require) coverage of a student in a "volunteer" Schools to Careers related situation.
14. Develop a specific provision that requires a teacher's employer to continue coverage while the teacher is in a temporary location in an approved Schools to Careers activity.

Hearings and Appeals—Employers and TPAs expressed concern that many decisions rendered by hearing officers and appeals officers of the Department of Administration lack consistency when the facts of the cases suggest otherwise. They further complained that

prior commitments regarding scheduling of hearings and related matters have not been adhered to by the Department of Administration. In an effort to deal with these issues, the committee made the following recommendations for legislative action:

15. Provide peer review or management review of hearing and appeals officers of the Department of Administration to help ensure consistency of decisions. Also require training of hearing and appeals officers at the National Judicial College in Reno.
16. Evaluate prior commitments made by the Department of Administration regarding scheduling of hearings and related matters.

Pensions and Annuities—The committee received testimony that suggested that Nevada’s workers’ compensation laws are not clear regarding whether an insurer may purchase an annuity to satisfy its obligation to provide long term benefits in certain cases. Self-insured employers testified that they currently purchase annuities in some cases. In order to clarify the Legislature’s position regarding the purchase of annuities by workers’ compensation insurers, the committee made the following recommendation:

17. Amend Chapter 616 to specify that insurers may purchase annuities.

Permanent Partial Disabilities—At the May 23, 1996, meeting of the committee, Dr. Richard Victor, Executive Director, Workers Compensation Research Institute, Cambridge, Massachusetts, made a presentation regarding PPD benefit structures and delivery systems. The WCRI is a nonpartisan, not-for-profit research institute that specializes in conducting research on workers’ compensation issues.

Dr. Victor’s presentation highlighted the adversarial nature of many PPD benefit delivery systems which leads to litigation, delay of benefit payments, and distrust between injured employees and insurers. He outlined the following key system features that can improve PPD benefit delivery systems:

- Rules that generate predictable payments;
- Practices that encourage nonpartisan experts;
- A system that fosters early payment;
- Agencies that help parties (especially injured employees) navigate the system; and
- An adjudication process that deters litigation.

Dr. Victor explained that injured employees often retain attorneys merely to obtain information, not necessarily to dispute decisions affecting their claims. He noted that a less complex system that generates more predictable outcomes probably would lead to fewer disputes and less litigation. In addition, he advised workers' compensation agencies to seek ways of improving communication with their clients.

Return-to-work strategies can help minimize economic losses to both employees and employers. According to Dr. Victor, the primary factors that shape return-to-work outcomes include the following:

- Economic incentives, including benefit levels and reemployment wage levels;
- Return to preinjury employer;
- Worker attributes reflected in unstable employment history; and
- Return to work in six months or less.

"Laboratory studies" from California demonstrate the subjectivity associated with PPD ratings that can contribute to disputes regarding the amount of benefits to which an injured employee may be entitled. Dr. Victor explained that even asymptomatic individuals (those persons with no industrial injuries) are likely to have measurable impairments, and that the amount of impairment increases with age (from 2 percent on average for a young person to 9 percent on average for an older person).

Dr. Victor also noted that when benefit levels are relatively high, incentives exist for injured employees to contest even small differences in impairment ratings. He cautioned, however, that policymakers must balance equity issues (such as the adequacy of compensation for work-related impairments) with cost savings associated with lower benefit levels and reduced litigation.

Vance Hughey, Senior Research Analyst, Research Division, Legislative Counsel Bureau, and Ron Swirczek, Administrator, DIR, presented the results of a 50-state survey on PPD awards with the assistance of Deb Braun, Chief Administrative Officer, DIR, and Ruth Ryan, Management Analyst, DIR. The survey compared the amount of PPD awards in different states under several assumptions regarding the wage of a hypothetical injured employee and the severity of the employee's injury.

After considerable deliberations regarding alternative methods of determining appropriate benefits for permanent partial impairments, the committee made the following recommendations:

18. Consider studying alternatives to the current PPD rating system such as implementing a schedule of benefits for most injuries to take out some subjective areas such as range of motion. If this review cannot be completed during the 1997 Legislative Session, continue the statutory committee and charge the committee with commissioning an independent study of PPD awards. The results of the study, along with recommendations of the committee, are to be presented to the 1999 Legislature.
19. Address the issue of PPD awards for dental problems. (Note: NRS 616C.485 and NAC 616C.508 govern payment of PPD awards for loss of or permanent damage to a tooth.)
20. Amend NRS 616C.090 to provide that an injured employee be allowed to choose a doctor from the rotating list for a PPD evaluation at any time.
21. Amend NRS 616C.090 to provide that if an injured employee's claim is being administered by SIIS and the injured employee requests a doctor from the rotating list, and the injured employee is assigned a doctor who is employed by SIIS, then the injured employee is entitled to request another doctor from the rotating list.
22. Amend NRS 616C.090 to provide that the doctor who shall rate the claimant for a PPD shall be the claimant's treating physician.

Regulation of Workers' Compensation Insurance—Many of the public comments during the first two meetings of the committee were complaints regarding a regulatory change to the formula used by SIIS to calculate experience modification factors. The concern expressed by these SIIS policyholders was that the new formula is unfairly discriminatory because it results in:

- a. An increase in standard premiums for policyholders with better than average loss experience; and
- b. A reduction in standard premiums for policyholders with worse than average experience.

At the second meeting of the committee, Mr. Hughey gave a presentation on experience rating and the effects of a change to the experience rating formula adopted by SIIS. Mr. Hughey explained that experience rating is a pricing tool that distinguishes each employer as better than, equal to, or worse than his or her industry average in terms of controlling losses. Two primary goals of experience rating are "predictive accuracy" and "safety incentive." In addition, credibility is used to gauge the level of confidence that an insurer has in the available data as an indicator of a policyholder's future losses.

The basic formula for calculating experience modification factors (e-mods) has been part of the NAC since at least 1983. The SIIS did not change this basic formula, although it did revise the credibility component of the formula.⁵ The change in the formula caused concern among many policyholders, especially smaller policyholders with e-mods less than one that also experienced stable or declining losses during the preceding year. Employers who had better than average loss experience and less than \$600,000 in expected losses, complained that their premiums were increased as a result of the change in the e-mod formula, while premiums were reduced for employers who had worse than average premiums and less than \$600,000 in expected losses.

Douglas Dirks, General Manager, SIIS, stated that the average e-mod for SIIS policyholders prior to the change to the formula was approximately 0.79. He explained that the average e-mod for all experience rated employers should be close to 1.0. The amount by which the average e-mod varies from 1.0 is referred to as an "off-balance." He stated that the revised formula was designed to reduce the "off-balance" from 21 percent to 16 percent. According to Mr. Dirks, premiums paid by experience rated policyholders would better reflect the risks of providing coverage as a result of this and other changes to the experience rating plan.

Robert Conger, a consulting actuary with Tillinghast-Towers Perrin, explained that the changes to the experience rating formula recently adopted by SIIS include:

- a. An increase in the "eligibility requirement" to be experience rated;
- b. A change to the credibility formula. Credibility factors for most employers were reduced;
- c. An increase in the dollar cap on individual claims; and
- d. An offsetting 6 percent reduction in manual premium rates.

After considering the testimony and recognizing that neither the committee nor the Commissioner of Insurance had jurisdiction over the regulation adopted by SIIS, the committee made the following recommendation:

23. Consider changing the law to place responsibility for adoption of an experience rating plan with the Commissioner of Insurance.

⁵ The credibility formula was changed by SIIS from $C = E / (1.1E + 40,000)$ to $C = E / (E + 100,000)$, where C = credibility and E = expected losses.

Public testimony was received from the owner of a custom woodworking company regarding a "three times" penalty (NRS 616D.200) imposed by SIIS for a period of time when the company was uninsured in Nevada. The owner explained to the committee that his Nevada employees were covered by a California policy during the period of time for which SIIS imposed the penalty. He argued that the regulation adopted by SIIS provided the agency with no discretion to wave or reduce the amount of the penalty in cases such as his. He contended that the regulation was contrary to the Legislature's intent to provide SIIS with discretion in imposing the penalty. The committee made the following recommendation regarding penalties for failure of an employer to secure or maintain workers' compensation insurance:

24. Correct a perceived conflict between NRS 616D.200 and the regulation adopted by SIIS regarding the "three times penalty" imposed for failure of an employer to secure or maintain workers' compensation insurance.

Mr. Swirczek testified regarding the annual review of the medical fee schedule. Such a review is required by subsection 2 of NRS 616C.260. The committee discussed the issue of setting maximum fees and how the medical fee schedule worked in conjunction with MCOs who typically require physicians on their provider panels to agree to substantial discounts from the approved medical fee schedule. The committee agreed to make the following recommendation:

25. Amend NRS 616C.260 to change the benchmark for the medical fee schedule.

The committee spent a considerable amount of time discussing the role of various entities involved in the workers' compensation program, especially in view of private carriers entering the market beginning July 1, 1999. The committee received testimony that currently certain regulatory functions are performed by SIIS (such as imposing a penalty for failure of an employer to secure or maintain workers' compensation insurance). In addition, employers complained that the regulatory responsibilities of DIR and the Commissioner of Insurance are often duplicative and confusing. In an effort to clarify regulatory responsibilities in a more competitive insurance environment, the committee made the following recommendation:

26. Identify which regulatory responsibilities should be delegated to the Commissioner of Insurance and/or DIR in anticipation of workers' compensation coverage being provided by private carriers beginning July 1, 1999.

Safety and Health—Testimony was provided to the effect that employees sometimes prevail upon appeal in cases involving a claim by an employer that a worker was injured as a result of being under the influence of a controlled substance. Employers explained that it is difficult to prove that an employee was intoxicated or "under the influence" at the time of an industrial injury because no levels have been established for controlled

substances as they have for alcohol. The committee was advised of a position taken by the Employment Security Division (ESD), Department of Employment, Training, and Rehabilitation, in similar cases involving eligibility determinations for unemployment compensation. According to testimony, if an employee is terminated by an employer for violating a written drug policy, the ESD upholds the denial of unemployment compensation benefits. The agency does not address the issue of whether the employee was under the influence at the time of the termination of employment, but rather upholds state laws that prohibit the use of illegal substances. This position was upheld in a recent case decided by the Supreme Court of Nevada (*Nevada Employment Security Department v. Cynthia Holmes*) in a claim against the San Remo Hotel in Las Vegas. The committee adopted the following recommendation:

27. Amend subsection 1(d) of NRS 616C.230 to strengthen provisions for an insurer to deny a workers' compensation claim if an injured employee tests positive for a controlled substance. Refusal to take a drug test would have the same presumption of "under the influence" as in the case of driving under the influence of alcohol. Termination of employment for failing a drug test or refusing to take a drug test would disqualify an injured employee from benefits.

Solvency Assessment and the Role of SIIS—Chairman Lynn C. Hettrick offered several proposals regarding the solvency assessment formula. First, he suggested that the mechanism for determining if and when a solvency assessment is to be imposed be changed. Currently, NRS 616B.110 provides that the Commissioner of Insurance may declare SIIS to be insolvent if the agency must liquidate its invested assets or real property in order to pay its outstanding obligations as they mature in the regular course of business. Such a declaration would trigger imposition of the solvency assessment. Chairman Hettrick stated his opinion that the Commissioner could make such a declaration at any time, which would require that a solvency assessment immediately be imposed on employers. He expressed concern that automatically imposing an assessment before considering other available options to deal with SIIS's financial difficulties might not be in the best interest of Nevada's workers' compensation program. Chairman Hettrick instead suggested that the decision to impose the assessment be made by the committee after it has considered all other available options.

Second, Chairman Hettrick suggested that if the assessment must be imposed, that it be an assessment on all employers in the amount of 4 percent of paid claims. He noted that an analysis by the Division of Insurance suggested that a 4 percent assessment on paid claims likely would be adequate if it became necessary to impose an assessment. He also stated that the figure of 4 percent could be higher or lower depending upon the extent of any insolvency of SIIS at the time a decision is made to impose an assessment. Chairman Hettrick argued that by placing the decision to impose an assessment with the committee, the most recent financial information could be considered before setting the assessment rate.

The committee discussed several options regarding the base upon which an assessment should be applied including premiums, the number of employees, and paid claims. Chairman Hettrick explained that using paid claims had several advantages over the other options. First, the current formula used by DIR to assess insurers for the administrative expenses of regulating workers' compensation insurance is based on paid claims. From an administrative standpoint, appending a solvency assessment to the current DIR assessment formula would be relatively easy. Second, basing a solvency assessment on paid claims provides an incentive for employers to improve workplace safety and to provide return to work opportunities for their injured employees. Under such a plan, a company with no paid claim costs would not pay an assessment. Likewise, an employer with high losses would pay a larger share of the assessment.

Representatives of governmental entities in Clark County suggested that the committee consider excluding from the solvency assessment formula payments for cancer, heart, and lung claims under NRS 617.453, 617.455, and 617.457. These sections of Nevada's occupational disease statutes provide a conclusive presumption that cancer, heart, and lung diseases arise out of and in the course of employment for fire fighters and police officers. The local government representatives argued that city and county governments are uniquely affected by these statutory provisions. They explained that they can neither prevent such claims nor defend against them. Because the law prohibits requiring that injured employees afflicted with these conditions accept light duty jobs, there is little that a local government can do to mitigate costs of such claims.

After much deliberation, the committee considered and adopted the following recommendations regarding the solvency assessment issue:

28. Amend NRS 616B.110 to require that the decision to impose the assessment be made by the Legislative Committee on Workers' Compensation after it has considered all other available options.
29. Amend NRS 616B.110 so that if an assessment is imposed, it is based on a percentage of paid claims of all employers. Consider allowing exemptions for special circumstances such as cancer, heart, and lung coverage provided by certain governmental entities.

Bill Draft Requests

The committee's recommendations to the 1997 Legislature are included in the following six BDRs:

- **BDR 53--952**—Revises provisions governing administration of workers' compensation.

- **BDR 53--953**—Revises provisions governing benefits for workers' compensation.
- **BDR 53--954**—Provides workers' compensation coverage for teachers and pupils participating in the program to provide pupils with the skills to make transition from school to work.
- **BDR 53--955**—Revises requirements for imposition of solvency surcharge.
- **BDR 53--956**—Transfers all authority to regulate workers' compensation to the Commissioner of Insurance and the Administrator of DIR.
- **BDR S--957**—Requires the Legislative Committee on Workers' Compensation to commission an independent study of awards for permanent partial disabilities.

ADDITIONAL RESOURCES AND CONCLUDING REMARKS

Section 242 of S.B. 316 (1993) included a provision that created a full-time position assigned to the Legislative Counsel Bureau for the purpose of conducting research and reviewing and evaluating data related to industrial insurance. One of the tasks assigned to that position is to publish a quarterly workers' compensation newsletter. Copies of the *Workers' Compensation Newsletter* or information regarding workers' compensation topics may be obtained by contacting:

Vance A. Hughey, Senior Research Analyst
Research Division
Legislative Counsel Bureau
401 South Carson Street
Carson City, Nevada 89701-4747
Telephone (702) 687-6825
Facsimile (702) 687-3048