ADOPTED REGULATION OF THE ADMINISTRATOR OF

THE DIVISION OF INDUSTRIAL RELATIONS OF

THE DEPARTMENT OF BUSINESS AND INDUSTRY

LCB File No. R132-14

Effective June 28, 2016

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

AUTHORITY: §§1-11, 13 and 14, NRS 616A.400, 616B.584, 616B.587 and 616B.590; §12, NRS 616A.400; §15, NRS 616A.400, 616B.584 and 616B.587.

A REGULATION relating to industrial insurance; establishing guidelines for the acceptance of ratings for permanent physical impairment and rulings on claims for reimbursement from the Subsequent Injury Account for Private Carriers; establishing requirements for service of certain documents on or by a claimant; establishing certain methods of proving an employer's knowledge of an employee's preexisting permanent physical impairment; establishing guidelines for determining a permanent physical impairment; providing for the reimbursement of certain benefits paid in the form of a lump sum; providing for the reimbursement of certain benefits paid by an annuity; revising provisions relating to the maintenance of files for claims; authorizing the Administrator of the Division of Industrial Relations of the Department of Business and Industry to refuse to process incomplete claims and to obtain additional information; identifying expenditures which may be eligible for reimbursement from the Subsequent Injury Account for Private Carriers; extending the time in which the Administrator will examine and provide a disposition of a claim; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this regulation establishes guidelines for use by the Administrator of the Division of Industrial Relations of the Department of Business and Industry in making determinations on ratings of permanent physical impairments for the purposes of industrial insurance.

Sections 3-7 of this regulation establish requirements relating to service of process of notices, pleadings and other documents concerning claims for reimbursement from the Subsequent Injury Account for Private Carriers.

Section 8 of this regulation establishes guidelines for use by the Administrator in making determinations of proof of an employer's knowledge of an employee's preexisting permanent physical impairment.

Section 9 of this regulation establishes guidelines for use by the Administrator in rating the permanent physical impairment of multiple body parts.

Section 10 of this regulation sets forth circumstances under which the Administrator will authorize reimbursement from the Subsequent Injury Account for Private Carriers in the form of a lump-sum payment.

Section 11 of this regulation establishes procedures for reimbursement from the Subsequent Injury Account for Private Carriers for certain compensation paid by annuities purchased by a private carrier to an injured employee.

Existing regulations establish requirements for the submittal and maintenance of claim files and correspondence and other documents relating to claims. (NAC 616B.010) **Section 12** of this regulation revises these provisions to specify the limited locations to which certain documents may be sent.

Existing regulations establish certain requirements for the contents of a claim against the Subsequent Injury Account for Private Carriers. (NAC 616B.760) **Section 13** of this regulation provides that the Administrator may refuse to process a claim for reimbursement from the Account that is incomplete or nonconforming, and the Administrator is not prohibited from requiring or obtaining additional information that is related to a claim.

Existing regulations provide that the Administrator will not consider certain expenditures by a private carrier to be reimbursable from the Subsequent Injury Account for Private Carriers. (NAC 616B.763) **Section 14** of this regulation provides that the Administrator will, in accordance with existing regulations, make a determination on expenditures which may be reimbursable from the Account. **Section 14** also revises requirements for the computation and reporting of the value of certain accident benefits furnished by a private carrier.

Existing regulations provide that the Administrator will examine a claim against the Subsequent Injury Account for Private Carriers and, not later than 90 days after receipt of the claim, provide certain notifications to the private carrier. (NAC 616B.766) **Section 15** of this regulation provides that the Administrator will notify a private carrier of the disposition of a claim for reimbursement from the Account not later than 120 days after the receipt of the claim.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. ***1. For the purposes of determining whether a preexisting impairment is a permanent physical impairment:***

(a) If the preexisting impairment of the employee arose out of and in the course of his or her employment and the employee has been assigned a rating of permanent impairment which

is no longer appealable, the Administrator may choose to accept the rating for the preexisting impairment if the rating was assigned based on the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment that was in effect on the date on which the preexisting impairment was rated;

(b) If a claim for reimbursement from the Subsequent Injury Account for Private Carriers has been submitted to the Administrator pursuant to NAC 616B.760 but the preexisting impairment has not yet been assigned a rating, the Administrator may choose not to make a ruling on the claim until a determination has been made concerning the preexisting impairment in accordance with the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment that was in effect on the date on which the subsequent injury is rated; and

(c) If a claim for reimbursement from the Subsequent Injury Account for Private Carriers has been submitted to the Administrator pursuant to NAC 616B.760 and a rating has been assigned to the preexisting impairment but the rating is not deemed final, the Administrator may choose not to make a ruling on the claim until the rating has been finalized in accordance with the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment that is in effect on the date on which the preexisting impairment is rated.

2. The Administrator is not bound by any agreement between an injured employee and a private carrier concerning:

(a) The rating of permanent impairment assigned to a preexisting condition or a subsequent injury;

(b) The edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment which should be used to assign a rating of permanent impairment to a preexisting condition or a subsequent injury; or

(c) The apportionment of the percentage of disability between the preexisting condition and the subsequent injury.

Sec. 3. *A claim for reimbursement from the Subsequent Injury Account for Private Carriers submitted pursuant to NAC 616B.760 must include, without limitation, the name of the person designated by the private carrier to accept service on behalf of the private carrier submitting the claim and the address and any facsimile number and electronic mail address at which that person may be served with notices, pleadings and other documents. Except as otherwise provided in section 5 of this regulation, all notices, pleadings and other documents, including, without limitation, any determinations of the Administrator, must be served on the person designated in the claim pursuant to this section.*

Sec. 4. *1. At the time the Administrator makes a determination regarding a claim for reimbursement from the Subsequent Injury Account for Private Carriers, the Administrator will serve on the person designated pursuant to sections 3 and 5 of this regulation, as applicable, a copy of the determination and a list of the witnesses whom the Administrator may call to testify in support of the determination.*

2. If the claim has been denied by the Administrator, in whole or in part, in addition to the documents served pursuant to subsection 1, the Administrator will serve on the person designated pursuant to sections 3 and 5 of this regulation a copy of each document and record upon which the Administrator primarily relied in making the determination.

Sec. 5. *1. A private carrier who is represented by legal counsel or a lay advocate shall, by service on the Administrator, provide notice of the name and business address of the legal counsel or lay advocate, as applicable, and any facsimile number and electronic mail address at which the legal counsel or lay advocate must be served with any notices, pleadings and other documents.*

2. If a private carrier has provided the notice required by subsection 1, the Administrator will thereafter serve all notices, pleadings and other documents on the legal counsel or lay advocate designated pursuant to subsection 1, as applicable, exclusively, unless the private carrier provides written notice to the Administrator of a change in representation.

Sec. 6. *Except for the submission of a claim for reimbursement against the Subsequent Injury Account for Private Carriers pursuant to NAC 616B.760, service on the Administrator of any filing, pleading, notice or other document required by NAC 616B.760, 616B.763 and 616B.766 and sections 2 to 11, inclusive, of this regulation must be made on the legal counsel designated by the Administrator.*

Sec. 7. *1. Except as otherwise provided by a specific statute or regulation, service of any notice, pleading or other document required by NAC 616B.760, 616B.763 and 616B.766 and sections 2 to 11, inclusive, of this regulation must be hand-delivered or made by first-class mail, electronic mail or facsimile.*

2. Service by hand delivery shall be deemed complete upon the delivery of the document to the person on whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable, to a person of suitable age and discretion who has the authority to accept service at the business address of the person on whom service is to be made or to a person of suitable age

and discretion at the place of residence of the person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable.

3. Service by first-class mail shall be deemed complete 3 days after the date on which the document is correctly addressed and mailed to the business address or place of residence of the person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable.

4. Service by electronic mail shall be deemed complete upon the successful transmission of the electronic mail to the electronic mail address of:

(a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable; or

(b) The Administrator or legal counsel designated by the Administrator, if service is made pursuant to section 6 of this regulation.

5. Service by facsimile shall be deemed complete upon the successful transmission of the facsimile to the facsimile number of:

(a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable; or

(b) The Administrator or legal counsel designated by the Administrator, if service is made pursuant to section 6 of this regulation.

Sec. 8. *1. Except as otherwise provided in subsection 2, as used in NRS 616B.587, the Administrator interprets the term "written records" to include:*

(a) Any written documentation kept by the employer in the ordinary course of business:

(1) Contemporaneously with the hiring of the injured employee.

(2) During the continued employment of the injured employee and before the date of the subsequent injury.

(b) Any other written documentation if the Administrator determines that the written documentation constitutes an objective record of the employer's knowledge of the injured employee's preexisting permanent physical impairment:

(1) At the time the employer hired the injured employee.

(2) During the continued employment of the injured employee and before the date of the subsequent injury.

(3) At any time before the employee suffered the subsequent injury for which reimbursement is being requested.

2. An affidavit, letter, declaration or other document regarding the preexisting impairment which is prepared after the subsequent injury does not satisfy the requirement of proof of the employer's knowledge that the injured employee suffered from a preexisting permanent physical impairment.

3. To satisfy the requirement set forth in subsection 4 of NRS 616B.587 that the private carrier establish by written records that the employer had knowledge of the preexisting permanent physical impairment of the injured employee, the private carrier must establish by a preponderance of the evidence that the contemporaneous written records show that:

(a) The employer had knowledge of the preexisting permanent physical impairment of the injured employee at the time the employee was hired; or

(b) The employer:

(1) Became aware of the preexisting permanent physical impairment of the injured employee after the employee was hired and before the date of the subsequent injury; and

(2) Continued to employ the employee notwithstanding the employer's knowledge of the preexisting permanent physical impairment.

Sec. 9. *1. For the purposes of subsection 3 of NRS 616B.587, the ratings of permanent impairment of two or more body parts, organ systems or organ functions may not be added together or combined to reach a rating of permanent impairment of 6 percent or more of the whole person to qualify a condition as a permanent physical impairment.*

2. The Administrator will use the American Medical Association's Guides to the Evaluation of Permanent Impairment as a reference for determining whether a rating of permanent impairment totals 6 percent or more of the whole person to qualify a condition as a permanent physical impairment pursuant to NRS 616B.587. Multiple body parts unrelated to a subsequent injury will not be considered as one impairment. Each body part, organ system or organ function included within a claim against the Subsequent Injury Account for Private Carriers must satisfy the definition of "permanent physical impairment" to qualify the body part, organ system or organ function for reimbursement under the claim.

Sec. 10. *1. Except as otherwise provided in subsection 2 or by specific statute or regulation, the Administrator will authorize reimbursement from the Subsequent Injury Account for Private Carriers for the payment of benefits in the form of a lump sum if:*

(a) The applicant meets the requirements of NRS 616B.587;

(b) The compensation paid was due;

(c) A lump-sum payment is reasonable, in the best interest of the injured employee and will eliminate any contingent future liability against the Subsequent Injury Account for Private Carriers; and

(d) A lump-sum payment:

(1) If the payment is being made for a permanent partial disability, meets the requirements of NRS 616C.495; or

(2) If the payment is being made for vocational rehabilitation services, meets the requirements of NRS 616C.590 or 616C.595.

2. The Administrator will not authorize reimbursement from the Subsequent Injury Account for Private Carriers for:

(a) Any payment that is prohibited by NRS 616C.410; or

(b) A lump-sum payment that was not made to an injured employee.

3. In considering whether to authorize reimbursement from the Subsequent Injury Account for Private Carriers for the payment of benefits in the form of a lump sum pursuant to this section, the Administrator may consider any information that he or she deems relevant, including, without limitation, the application of any statute or regulation.

Sec. 11. *1. A private carrier who purchases an annuity to ensure the payment of a claim that is filed with the private carrier pursuant to chapters 616A to 617, inclusive, of NRS may submit a claim for reimbursement from the Subsequent Injury Account for Private Carriers in accordance with this section, NAC 616B.760, 616B.763 and 616B.766 and section 10 of this regulation.*

2. The private carrier may submit, as provided in subsection 3, a claim for reimbursement for the amount of compensation that the annuity paid to the injured employee for whom the annuity was purchased.

3. The private carrier may submit a claim for reimbursement annually on the anniversary date of the purchase of the annuity or more frequently with good cause shown.

4. The Administrator will not approve or pay a claim for reimbursement for an annuity submitted pursuant to this section for:

(a) Any amounts which, in combination with previous reimbursements, exceed the lesser of:

(1) The price of the annuity; and

(2) The aggregate amount of compensation that the annuity has paid to the injured employee;

(b) Attorney's fees relating to the purchase of the annuity; or

(c) Any administrative expenses or other expenses relating to the purchase of the annuity, including, without limitation, expenses for the copying of records.

5. As used in this section, "good cause" includes, without limitation, a financial exigency or extraordinary circumstance.

Sec. 12. NAC 616B.010 is hereby amended to read as follows:

616B.010 1. Except as otherwise provided in ***subsection 2 and*** NAC 616B.013, copies of all claim files maintained by an insurer, third-party administrator or organization for managed care pursuant to chapters 616A to 617, inclusive, of NRS or regulations adopted pursuant thereto must be maintained in one of its offices located in this State.

2. ***Any Form C-4, Employee's Claim for Compensation/Report of Initial Treatment, submitted to an insurer, third-party administrator or organization for managed care that concerns a claim for compensation which is being administered pursuant to chapters 616A to 617, inclusive, of NRS or any regulations adopted pursuant thereto must be addressed to the insurer, third-party administrator or organization for managed care at one of its offices located in this State.*** All ***other*** correspondence and other documents submitted to an insurer,

third-party administrator or organization for managed care that concern a claim for compensation that is being administered pursuant to chapters 616A to 617, inclusive, of NRS or regulations adopted pursuant thereto must be addressed to the insurer, third-party administrator or organization for managed care at one of its offices located in this State ~~[. The]~~ ***or to a facility located outside this State for the sole purpose of electronic scanning of the correspondence and documents to the claim file. All*** correspondence and documents shall be deemed to be officially received only if they have been so addressed.

Sec. 13. NAC 616B.760 is hereby amended to read as follows:

616B.760 1. A claim ~~[against]~~ ***for reimbursement from*** the Subsequent Injury Account for Private Carriers pursuant to NRS 616B.587 or 616B.590 must be submitted, in writing, to the Administrator.

2. A private carrier who submits a claim pursuant to subsection 1 shall include with the claim:

(a) All documents contained in the file of the claim and any other supporting documents that the private carrier relies upon or deems important for the determination of a claim; and

(b) A completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist," which is prescribed by the Administrator. A copy of the form may be obtained from the Administrator at no cost.

3. A claim submitted to the Administrator pursuant to subsection 1 must be organized in the manner prescribed in Form D-37, Insurer's Subsequent Injury Checklist.

4. The Administrator may refuse to process a claim that is incomplete or does not conform to the requirements of Form D-37, Insurer's Subsequent Injury Checklist.

5. This section does not prohibit or limit the Administrator from requiring or obtaining from the private carrier or any other person any additional information relating to a claim submitted pursuant to subsection 1.

Sec. 14. NAC 616B.763 is hereby amended to read as follows:

616B.763 1. The Administrator will ~~[not consider the following expenditures to be]~~ ***make determinations on*** expenditures for claims for which a private carrier may receive reimbursement from the Subsequent Injury Account for Private Carriers ~~[:~~

~~(a) Amounts held in reserve for any anticipated expense in connection with a claim.~~

~~(b) Money paid in excess of the compensation calculated pursuant to NRS 616C.440, 616C.475, 616C.490 or 616C.500 or NAC 616C.577 for a temporary total, temporary partial, permanent total or permanent partial disability or vocational rehabilitation maintenance.~~

~~(c) Legal expenses, including, without limitation, court costs, attorney's fees, costs for depositions, investigations and hearings.~~

~~(d) Payment of an award of interest.~~

~~(e) Administrative expenses, including, without limitation, expenses incurred for:~~

~~(1) Copying records;~~

~~(2) Reviewing any report of a physician or chiropractor contained in a file relating to a claim; or~~

~~(3) Services relating to the management of costs of medical care.~~

~~(f) Costs incurred in a claim that is ultimately denied.]~~ ***in accordance with the provisions of NAC 616B.707.***

2. The value of accident benefits furnished by a private carrier for industrial injuries or illnesses must be computed and reported pursuant to the schedule of fees and charges for accident benefits ~~[adopted]~~ ***that was:***

(a) Established pursuant to subsection 2 of NRS 616C.260 ~~[.]~~ ***; and***

(b) In effect on the date the accident benefits were provided.

Sec. 15. NAC 616B.766 is hereby amended to read as follows:

616B.766 1. The Administrator will examine a claim ~~[against]~~ ***for reimbursement from*** the Subsequent Injury Account for Private Carriers and **,** not later than ~~[90]~~ ***120*** days after receipt of the claim ~~[will:~~

~~(a) Notify the private carrier that a determination on the claim cannot be made and the reasons therefor; or~~

~~(b) Notify]~~ **,** ***notify*** the private carrier of the ~~[acceptance or denial]~~ ***disposition*** of the claim ~~[;~~ ~~and~~

~~(c) If the claim is accepted, notify the private carrier of the verified amount of reimbursement and that the claim will be processed for payment by the State Controller.]~~ ***in accordance with sections 3 and 5 of this regulation, as applicable.***

2. An appeal from a determination of the Administrator concerning a claim ~~[against]~~ ***for reimbursement from*** the Subsequent Injury Account for Private Carriers must be made in writing and sent directly to the appeals officer ***at the Department of Administration*** within 30 days after the date of the Administrator's determination.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

IN THE MATTER OF THE ADOPTION OF PERMANENT REGULATION RELATING TO INDUSTRIAL INSURANCE; ESTABLISHING FOR ACCEPTANCE OF RATINGS FOR PERMANENT PHYSICAL IMPAIRMENT AND RULINGS ON CLAIMS AGAINST THE SUBSEQUENT INJURY ACCOUNT FOR PRIVATE CARRIERS; ESTABLISHING REQUIREMENTS FOR SERVICE OF CERTAIN DOCUMENTS ON OR BY CLAIMANTS; ESTABLISHING CERTAIN METHODS OF PROVING AN EMPLOYER'S KNOWLEDGE OF AN EMPLOYEE'S PREEXISTING PERMANENT PHYSICAL IMPAIRMENT; ESTABLISHING GUIDELINES FOR DETERMINING A PERMANENT PHYSICAL IMPAIRMENT; PROVIDING FOR REIMBURSEMENT OF CERTAIN BENEFITS PAID IN THE FORM OF A LUMP-SUM PAYMENT; REVISING PROVISIONS RELATING TO THE MAINTENANCE OF CLAIM FILES; AUTHORIZING THE ADMINISTRATOR OF THE DIVISION OF INDUSTRIAL RELATIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY TO REFUSE TO PROCESS INCOMPLETE CLAIMS AND TO OBTAIN ADDITIONAL INFORMATION; IDENTIFYING EXPENDITURES WHICH MAY BE ELIGIBLE FOR REIMBURSEMENT FROM THE SUBSEQUENT INJURY ACCOUNT FOR PRIVATE CARRIERS; EXTENDING THE TIME IN WHICH THE ADMINISTRATOR WILL EXAMINE AND PROVIDE A DISPOSITION OF A CLAIM; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

_____/

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
LCB FILE NO. R132-14

AMENDED INFORMATIONAL STATEMENT

The following statement is submitted for adoption of new provisions and the amendment of existing provisions to Nevada Administrative Code (NAC) Chapter 616B relating to the Subsequent Injury Account for Private Carriers.

1. A clear and concise explanation of the need for the adopted regulation.

The Division of Industrial Relations, Workers' Compensation Section's proposed additions and amendments to Chapter 616B, Nevada Administrative Code, will provide greater clarity to the regulated community. These adopted regulations will add new provisions clarifying preexisting permanent physical impairment; defining the person or persons designated to accept service on behalf of the applicant; clarifying the notification of application acceptance or denial determination issued by the Administrator and lists of witnesses; requiring for filing the application, pleadings, notices, or other documents required by NAC 616B.760 to 616B.766, inclusive, must be made on the legal counsel for the Administrator; clarifying the delivery

method of any service filing, pleadings, notices, or other documents required by NAC 616B.760 to 616B.766, inclusive; clarifying "written documentation" and, "permanent physical impairment"; and clarifying when lump-sum payments will be accepted and the amount thereof, for applications filed with the Subsequent Injury Account for Private Carriers.

2. A description of how public comment was solicited, a summary of public responses, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notices of workshop and notices of intent to act upon a regulation were sent by U.S. mail and e-mail to over 2,450 persons who were known to have an interest in the subject of the Nevada Industrial Insurance Act, as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Department of Business and Industry, Division of Industrial Relations, Workers' Compensation Section, www.dirweb.state.nv.us/WCS/wcs.htm, mailed to all county libraries in Nevada and posted at the following locations:

Division of Industrial Relations
400 W. King Street, #400
Carson City, NV 89703

Department of Business and Industry
555 E. Washington Ave., #4900
Las Vegas, NV 89101

Workers' Compensation Section
1301 N. Green Valley Pkwy., #200
Henderson, NV 89074

NVOSHA
4600 Kietzke Lane, # F-153
Reno, NV 89502

Grant Sawyer Building
555 E. Washington Ave,
Las Vegas, NV 89101

Bradley Building
2501 E. Sahara Ave.
Las Vegas, NV 89104

Nevada State Library, Archives and Public Records
100 Stewart Street
Carson City, NV 89701

A workshop was held via videoconference on January 5, 2015, at 9:00 am at the Nevada State College offices located at 303 S. Water Street, Room 119, Henderson, Nevada and Western Nevada College offices located at Cedar Building, Room 307, 2201 W. College Parkway, Carson City, Nevada. Thereafter on or about December 18, 2015, the Administrator of the Department of Business and Industry, Division of Industrial Relations (Administrator) issued a Notice of Intent to Act on Proposed Regulations which incorporated in the proposed amendments the suggestions of the parties attending the January 5, 2015 workshop. A public hearing was held via videoconference on February 18, 2016, at 9:00 am at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada and the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada.

A copy of this summary of the public response to the proposed regulation may be obtained from Donald C. Smith, Esq. Senior Division Counsel, at Division of Industrial Relations, 1301 N.

Green Valley Pkwy., #200, Henderson, NV 89074, 702-486-9070, or e-mail to donaldcsmith@business.nv.gov.

3. The number of persons who:
(a) Attended each hearing;
(b) Testified at each hearing; and
(c) Submitted to the agency written comments.

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information, if provided to the agency conducting the hearing:
(a) Name;
(b) Telephone number;
(c) Business address;
(d) Business telephone number;
(e) Electronic mail address; and
(f) Name of entity or organization represented.

At the **January 5, 2015 Workshop**, which was held at two sites via videoconference, in Henderson 11 attended; in Carson City 8 attended, with testimony received from one (1) attendee. A summary of the testimony at this public hearing follows:

Mike Livermore, Alternative Service Concepts, LLC, 639 Isbell Road, Suite 390, Reno, NV 89509-4993; Telephone: (775) 329-1181; E-mail: james.livermore@ascrisk.com. Regarding Section 1 and Section 2, which have to do with the subsequent injury fund, Subsection 2 of Subsection (a) talks about preexisting impairment. I made a note here that the latter part of that sentence talking about "preexisting impairment that arose out of and it has been assigned a rating of permanent impairment which is no longer appealable, the administrator may choose to accept the rating for the preexisting impairment if the rating was assigned based on the edition of the AMA Guides that was in effect on the date on which the preexisting impairment was rated;". I think you are marching right into a confrontation with the ranked decision by the Supreme Court. I think the rule that governs apportionment of PPDs affirmed by the Supreme Court in late decision equally applies to the process of subsequent injury decisions. I object to section 2(a) because it does not comport with the Supreme Court decision of Blake. Also Section 2(2) "the administrator is not bound by any agreement between an injured employee and a private carrier concerning:" and it goes on through items. I disagree. I believe the Administrator and the board dealing with subsequent injury fund recoveries must be bound by agreements between the injured employee and the private carriers when they have been ratified when they are the product of a stipulation in the course of litigation, because at that point it becomes a legal decision about the claim and it's ratified and affirmed by typically the appeals officer. It seems to me DIR needs to be bound by decisions of the Department of Administration just like claimants, employers, and insurers must be bound by them. So I object to the inclusion of that. The Administrator should be changed to, "is bound by any agreement, etc., etc., possibly with the caveat based on the stipulation, stipulated agreement, resulting in a decision by the appeals office. Section 2(3).

On Section 7(1), this subsection lays out the means by which service shall be done. Must be made by hand delivery, first-class mail, electronic mail or facsimile. I don't understand why Fed Ex, UPS or other means are excluded.

On Section 8, I am making a generic objection to a qualification of what written records means. I think that it goes too far beyond statute, and the statute needs to be allowed interpretation. It can be determined, if necessary by the courts, appeals, whatever, and not limited to what DIR wants to consider it as written records. I think that the statute says enough and I think that what this tends to do is impose DIR's interpretation of the statute upon the submission. I think that that interpretation of the statute is contested.

On Section 11(1), there is a typo on subsection 2 in "NAC 6168.013", should be 616B.013, "B" as in boy. "Must be maintained" this is the second section involving changes to this I believe. Which is a little confusing. I've already spoken to the issue of electronic claim files. They can't be maintained at one of the offices located in this state because they are on servers in a corporate office or elsewhere somewhere in the country. So again I'll reiterate, 616B.010 needs to be dropped. Its redundant here, again with the 21st century, we're dealing with electronic paperless claim files. And then in subsection 2, "Any form C-4 … any regulations adopted pursuant thereto must be addressed to the insurer or third-party administrator at one of its offices located in this State." I concur that goes right along with other requests for correspondence that I discussed in previous regulations and I would like here again, that the word "signed" and "dated" be inserted after be, and before addressed in that section. So that it would read, beginning with, "Pursuant thereto must be signed and dated and addressed to the insurer or third party administrator at one of its offices located in this State."

Written comments were received for the January 5, 2015 public workshop and shortly before the February 18, 2016 Hearing on the Notice of Intent to Act on Proposed Regulations. A summary of the written comments follows:

Written Comments received January 5, 2015 from Craig Coziahr, Pro Group Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone (775) 887-2480. Pro Group is concerned that Section 2(1)(a) which adds a new provision for determining preexisting impairment, does not include preexisting impairments which do not arise out of and in the course of employment, such as diabetes. Pro Group is also concerned that Section 2(2) which states, "The Administrator is not bound by any agreement between the injured employee and a private carrier."

Pro Group is also concerned that Section 8, which adds a new provision defining the term "written records" in NRS 616B.587(4). Specifically, in Subsection 5(b)(1), which deals with "employer retention," what is the declined further permanent light duty, resigned, were terminated for cause or left for other employment? Additionally, Subsections 5(b)(2) and (3) are too vague and not well defined and should just refer to NAC 616B.583 and 616B.586.

Pro Group is also concerned that Section 9(1), which adds a new provision clarifying that two or more body parts, organ systems or organ functions may not be added together to reach a rating of 6 percent or more permanent impairment.

Finally, Pro Group believes that Section 10(1)(c), which regulates reimbursement for lump-sum payments, which states, "A lump-sum payment is reasonable, in the best interest of the injured employee and will eliminate any contingent future liability against the Subsequent Injury Account for Private Carriers," needs clarification. Does this provision refer to Stipulated Settlements?

February 16, 2016 e-mail from Chris Bosse, **Renown, 50 West Liberty Street, Suite 1100, Reno, Nevada 89501; Telephone: 775-982-5761; E-mail: cbosse@renown.org.** Renown suggested that the new regulation contained in Section 2(1)(a) be revised from "the Administrator may choose" to "the Administrator will accept" prior ratings of preexisting impairment and that in subsection (2)(b), which notes that the Administrator is not bound by claim settlements agreements between the injured employee and private carrier regarding which version of the AMA's Guides to the Evaluation of Permanent Impairment was used to assign a rating. Renown also suggested that the new regulation contained in Section 8 strike the words "permanent physical impairment" or "impairment" and substitute either "medical condition or injury" or "condition" in subsections (1)(b), (2), (3), (3)(a), (3)(b)(1) and (3)(b)(2).

At the **February 18, 2016 Hearing on the Notice of Intent to Act on Proposed Regulations**, which was held at two sites via videoconference, in Las Vegas 7 attended; in Carson City 5 attended, with testimony received from three (3) attendees. A summary of the testimony at this public hearing follows:

Deena Carson, WorkersChoice in Hometown Health, 830 Harvard Way, Reno, Nevada 89502; Telephone: 775-982-3232; E-mail: dcarson@HometownHealth.com. On Section 2, testified that if we are going to convert PPD evaluations percentage of impairment for apportionment purposes based on the current edition of the American Medical Association Guide for impairment for consistency across the board.

On Section 8(2)(a) [sic] (Section 8(1)(b)) "any other written document the administrator determines the written documentation constitutes an objective record of employer's knowledge" of the injury or preexisting condition it should be "medical condition or injury," not just injury because as we all know the subsequent injury fund was created for not just physical industrial injuries but also preexisting conditions such as diabetes etc. It also implies the employer should be aware of what percentage of impairment that exists at the time of their subsequent injury. That's asking a lot. They may know they have a previous back injury and prior surgery but why would they need to know what percentage of impairment was applied?

Craig Coziahr, Pro Group Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone 775-887-2480; E-mail: craigcoziahr@pgmnv.com: Craig Coziahr of Pro Group. Same section. But I don't disagree with what she is saying. Additionally, where it says "constitutes an objective record," is there some clarification of what an objective record is?

Jacque Everhart, Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Pkwy., #200, Henderson, Nevada 89074; Telephone: 702-486-9089; E-mail: everhart@business.nv.gov: She testified on Section 8(1)(b) "objective record" that an e-mail,

medical records, anything written in the employer's records. They could have documented a conversation they had with the injured employee, what this is trying to eliminate is affidavits after the fact.

Craig Coziahr, ProGroup Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone 775-887-2480; E-mail: craigcoziahr@pgmnv.com: Testified regarding Section 10(d)(2), "if the payment is being made for vocational rehabilitation services meets the requirements of NRS 616C.590 or 616C.595," requesting that the language reference NRS 616C.530, NRS 616C.590 because ProGroup quite often gets involved early with a voc rehab counselor get our assessment done potentially develop some training for them that can either be used to make them employable with their existing employer or get them started moving forward so they are maybe a third or halfway through their voc rehab plan before they are even MMI. The goal is to contain the cost of the claim. While the injured employee is not technically eligible for voc rehab, those expenses are not usually reimbursable. Also in Section 10(d)(2)(b), should state a "lump sum payment that was not made to an injured employee or their representative or dependent."

Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers Holdings, Inc., 10375 Professional Circle, Reno, Nevada 89521; Telephone: 775-327-2458; E-mail: jwerbeckes@employers.com: On Section 15(1) what was the reason for changing from 90 to now 120 days?

Donald C. Smith, Esq., Division of Industrial Relations, Workers' Compensation Section, 1301 N. Green Valley Pkwy., #200, Henderson, Nevada 89074; Telephone: 702-486-9071; E-mail: donaldcsmith@business.nv.gov: Testified that an underlying legislative change a number of sessions ago went from 90 to 120 days (NRS 616B.587(6) in 2007).

Written comments were received before the March 3, 2016 deadline for written comments. A summary of the written comments follows:

March 3, 2016 Written Comments from Donald E. Jayne, CPCU, Jayne & Associates, Inc., P.O. Box 250, Gardnerville, Nevada 89410; Representing Nevada Self-Insurers Association; Telephone: 775-265-7114; E-mail: donaldjayne@charter.net. The Nevada Self-Insurers Association (NSIA) does not have major concerns with this regulation and fully supports the testimony of Craig Coziahr, NSIA member from ProGroup. Specifically in new Section 10(1)(d)(2), they suggest that the reference to NRS 616C.530 replace the reference to NRS 616C.590, which should be deleted. They suggest that NRS 616C.530 addressing return to work priorities is more appropriate than NRS 616C.590, which addresses eligibility for vocational rehabilitation services.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

The Division sent by U.S. Mail and via e-mail the Notice of Public Workshops to Solicit Comments on Proposed Regulations to over 2,450 persons who were known to have an interest

in the subject on Chapters 616A through 616D, inclusive, and 617 of the Nevada Administrative Code, as well as any persons who had specifically requested such notice.

A copy of this summary of the public response to the proposed regulations may be obtained from Donald C. Smith, Esq. at the Division of Industrial Relations, Legal Department, 1301 N. Green Valley Pkwy., #200, Henderson, NV 89074, telephone (702) 486-9070, or e-mail to donaldcsmith@business.nv.gov.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulations without change.

A number of revisions were suggested at the February 18, 2016 hearings and written comments received before that hearing, some of which were not incorporated into the proposed regulation by the Division. Each of those suggested revisions which were not adopted is discussed separately below.

A suggestion was made that Sections 2(1)(a) and (2)(b) be amended to require the administrator to accept, rather than exercise his discretion to accept, the rating of a preexisting impairment and would require conversion of a proper rating to an impairment based on the current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment. This suggestion was not adopted as the Division believes the proposed language conflicts with the language of NRS 616B.687(3) and the purpose of the subsequent injury account to reimburse later claims if certain conditions were fulfilled in an earlier claim.

A suggestion was made that Section 8(1)(b), (2), (3), (3)(a), (3)(b)(1) and (3)(b)(2) be amended by striking "permanent physical impairment" and be replaced with "medical condition or injury" or "condition." This suggestion was not adopted as NRS 616B.587(3) specifically references "permanent physical impairment" which is defined in NRS 616B.587(4).

A suggestion was made that Section 10(1)(d)(2) be amended by adding NRS 616C.530 in place of NRS 616C.590. This suggestion was not adopted because NRS 616C.530 sets forth the general priorities for returning an injured employee to work, while NRS 616C.590 explicitly defines the eligibility of an injured employee to receive vocational rehabilitation services.

A suggestion was made that Section 10(d)(2)(b), should state a "lump sum payment that was not made to an injured employee or their representative or dependent." This suggestion was not adopted as NRS 616B.687(1) specifically references that the account is for reimbursement to the private carrier for compensation to employees and does not reference representatives or dependents.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

(a) Both adverse and beneficial effects.

The Division anticipates no adverse or beneficial effects, either direct or indirect, on the regulated business community or on the public as the result of the adoption of this regulation. The effects, if any, will be solely to private workers' compensation insurance carriers, which may need to revise its existing business processes on subsequent injury applications.

(b) Both immediate and long-term effects.

The Division anticipates no immediate or long-term effects, either direct or indirect, on the regulated business community or on the public as the result of the adoption of this regulation. The effects, if any, will be solely to private workers' compensation insurance carriers, which may need to revise its existing business processes on subsequent injury applications.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed regulation does not include any provisions which duplicate or are more stringent than existing federal, state or local standards.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulations do not provide for a new fee or increase an existing fee.

12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Administrator has determined that the proposed regulations do not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Administrator considered the

fact that the proposed amendments solely affect private workers' compensation insurance carriers.

Dated this 2nd day of June, 2016.

By: /s/

Donald C. Smith, Esq., Division Counsel
Department of Business and Industry
Division of Industrial Relations
1301 N. Green Valley Pkwy., #200
Henderson, NV 89074