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.

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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