

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R149-09

January 5, 2010

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

AUTHORITY: §1, NRS 616A.400, as amended by section 1.5 of Senate Bill No. 195, Chapter 500, Statutes of Nevada 2009, at page 3031; §§2-4, NRS 616A.400 and section 12 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2778; §5, NRS 616A.400 and section 15 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2779; §6, NRS 616A.400 and section 16 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2779; §§7-12, NRS 616A.400 and 616D.120, as amended by section 13.8 of Senate Bill No. 361, Chapter 269, Statutes of Nevada 2009, at page 1131.

A REGULATION relating to industrial insurance; including various injuries within the definition of “catastrophic injury”; adopting certain requirements for an adjuster who administers a claim for catastrophic injury; establishing certain provisions relating to life care plans; adopting criteria by which the Division of Industrial Relations of the Department of Business and Industry may refuse to recommend approval of an application for a certificate of registration as an administrator; adopting provisions relating to untimely payments to injured workers; establishing certain provisions relating to employee leasing companies; and providing other matters properly relating thereto.

Section 1. Chapter 616A of NAC is hereby amended by adding thereto a new section to read as follows:

1. The Division may refuse to recommend for final approval an application for a certificate of registration as an administrator pursuant to subsection 3 of NRS 683A.08524 because:

(a) A principal of the applicant was formerly a principal of a third-party administrator or insurer which has an outstanding debt owing to the Division or an injured employee;

(b) The information in the application reveals that the applicant does not maintain adequate staffing to properly administer claims; or

(c) Any other reason the Division determines may hinder the prompt and efficient payment of compensation to injured employees.

2. As used in this section:

(a) “Debt” includes, without limitation, an administrative fine, a benefit penalty or a penalty imposed pursuant to subsection 4 of NRS 616C.065.

(b) “Principal” means an owner, manager, officer, proprietor or any other person having a significant degree of control over the administration of claims.

Sec. 2. Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this regulation.

Sec. 3. *For the purposes of subsection 8 of section 11 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2778, “catastrophic injury” means, in addition to the injuries described in subsections 1 to 7, inclusive, of section 11 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2778:*

1. An injury sustained from an accident and resulting in a coma or vegetative state;

2. An injury sustained from an accident and resulting in loss or significant impairment of function of one or more vital internal organs or organ systems;

3. An injury sustained from an accident and resulting in the mangled, crushing or amputation of a major portion of an extremity; or

4. An injury sustained from an accident which the insurer and injured employee agree should be administered as a claim for a catastrophic injury.

Sec. 4. For the purposes of subsection 4 of section 3 of this regulation, an injured employee may submit to his insurer a written request that his claim should be administered as a claim for a catastrophic injury. If an injured employee submits a written request pursuant to this section, the insurer shall issue a written determination within 30 days after receipt.

Sec. 5. An adjuster who administers a claim for a catastrophic injury must:

1. Have a minimum of 4 years of experience in adjusting workers' compensation claims for lost time; or

2. Have a minimum of 2 years of such experience and work under the direct supervision of an adjuster who has a minimum of 4 years of experience in Nevada in adjusting workers' compensation claims for lost time.

Sec. 6. 1. For the purposes of section 16 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2779, a life care plan must include, without limitation, the formation of a team to manage and monitor the life care plan which includes, without limitation:

(a) A registered nurse;

(b) A vocational rehabilitation counselor; and

(c) An adjuster qualified pursuant to section 5 of this regulation.

2. The team for the life care plan shall assess the following:

(a) The number of home or hospital visits determined to be necessary or appropriate by the registered nurse and vocational rehabilitation counselor;

(b) The life expectancy of the injured employee;

(c) The medical needs of the injured employee, including, without limitation:

- (1) Surgery;*
- (2) Prescription medication;*
- (3) Physical therapy; and*
- (4) Maintenance therapy;*
- (d) The impact, if any, of any preexisting medical conditions; and*
- (e) The potential of the injured employee for rehabilitation, taking into account the injured employee's:*

- (1) Medical condition;*
- (2) Age;*
- (3) Educational level;*
- (4) Experience;*
- (5) Motivation; and*
- (6) Any other considerations deemed relevant.*

3. The team for the life care plan shall establish a schedule for meeting or communicating with the injured employee, if practicable, and the treating physician for the purpose of determining the need for, without limitation:

- (a) Special medical attention or treatment; and*
- (b) Medical devices, including, without limitation:*
 - (1) Wheelchairs;*
 - (2) Prostheses;*
 - (3) Specially equipped or designed motor vehicles; and*
 - (4) Psychological counseling or testing.*

4. The team for the life care plan shall create a plan of action for treatment or vocational rehabilitation of the injured employee or consideration of the possible permanent total disability of the injured employee.

5. In addition to any claim determination affecting the rights of the injured employee under his claim, or responses to requests on behalf of the injured worker for specific action or information on the claim or any other contact that may occur, the insurer shall:

(a) Schedule a personal meeting to take place at least once per calendar month between the adjuster and the injured employee or a family member or designated representative of the injured employee concerning the status of the claim; or

(b) If a personal meeting is not practicable, provide a written report at least once per calendar month, sent by first class mail, to the injured employee, family member or designated representative concerning the status of the claim and soliciting requests and information.

6. An insurer that accepts a claim for a catastrophic injury shall base the life care plan on the condition of the injured employee at the time the life care plan is developed. If there is a substantial or significant change in the condition or prognosis of the injured employee, the insurer shall amend the life care plan to reflect the change in condition or prognosis.

7. An insurer that did not originally accept a claim as a claim for a catastrophic injury shall thereafter designate the claim as a claim for catastrophic injury if the claim meets the definition of a claim for catastrophic injury in section 11 of Assembly Bill No. 24, chapter 483, Statutes of Nevada 2009, at page 2778, and section 3 of this regulation.

Sec. 7. Chapter 616D of NAC is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of paragraph (h) of subsection 1 of NRS 616D.120, to determine whether an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has engaged in a pattern of untimely payments to injured workers, the Administrator will consider:

(a) The reasons given by the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company for making the payments after the time set forth in the applicable statute or regulation;

(b) The efforts made by the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company to make the payments within the time set forth in the applicable statute or regulation;

(c) The date the payments were made;

(d) The number of injured employees who have received untimely payments;

(e) The number of untimely payments;

(f) The length of the time period in which the untimely payments occurred;

(g) Whether the amount of any payments due, or any portion of that amount, was unknown, unclear or ambiguous, and whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company took action or exercised reasonable diligence to determine the unknown amounts or to clarify the uncertainty or ambiguity and to make the payments due within the time set forth in the applicable statute or regulation or at any time thereafter;

(h) Whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company was advised, in writing, by the affected

injured employee or his representative that payments could be delayed pending the outcome of any further negotiations relating to the compensation that was due;

(i) Whether successive or numerous untimely payments have been made to a single injured employee;

(j) Whether the untimely payments involved the same form of compensation, such as temporary total disability;

(k) Whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company knew or reasonably should have known of the circumstances resulting in or likely to result in multiple untimely payments to one or more injured employees;

(l) Whether the insurer, organization for managed care, health care provider or third-party administrator established the policies and procedures required by NAC 616D.311 and complied with those policies and procedures;

(m) Whether the untimely payments were the result of error, lack of good faith or diligence, neglect or another cause within the control of the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company; and

(n) Any other circumstance which the Administrator deems relevant to determine whether untimely payments to one or more injured employees constitute a pattern of untimely payments that warrants awarding a benefit penalty to an injured employee.

2. Timeliness of payments must be determined by the statute or regulation specifically applicable to the type of payment involved.

3. The insurer or third party administrator shall record in the claim file the date on which any payment of compensation or other relief pursuant to chapters 616A to 617, inclusive, of NRS is made to an injured employee or other person or has been deposited for mailing to the injured employee or other person. This information must be provided to the Administrator upon request.

Sec. 8. NAC 616D.315 is hereby amended to read as follows:

616D.315 For the purposes of paragraph (c) of subsection 1 of NRS 616D.120, to determine whether an insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* has unreasonably delayed payment to an injured employee of compensation found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS, the Administrator will consider:

1. The reasons given by the insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* for making the payment after the time set forth in paragraph (c) of subsection 1 of NRS 616D.120;
2. The efforts made by the insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* to make the payment within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, if any;
3. The date the payment was made;
4. Whether the amount of compensation due, or any portion of that amount, was unclear or ambiguous and whether the insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* took action or exercised

reasonable diligence to clarify the uncertainty or ambiguity and to pay the compensation due within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, or at any time thereafter;

5. Whether the amount of compensation due, or any portion of that amount, was unknown or could have been determined through the exercise of reasonable diligence within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, or at any time thereafter;

6. Whether the insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* was advised, in writing, by the injured employee or his representative that payment of the compensation due could be delayed pending the outcome of any further negotiations relating to the compensation that was due;

7. Whether the insurer, organization for managed care, health care provider or third-party administrator established the policies and procedures required by NAC 616D.311 and complied with those policies and procedures;

8. Whether the delay in the payment of the compensation due, or any portion thereof, was the result of error, lack of good faith or diligence, neglect or another cause within the control of the insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer ~~or~~ *or employee leasing company*; and

9. Any other circumstance which the Administrator deems relevant to determine whether a delay in the payment of compensation due was reasonable.

Sec. 9. NAC 616D.400 is hereby amended to read as follows:

616D.400 1. For the purposes of subsection 2 of NRS 616D.120 and except as otherwise provided in chapters 616A to 617, inclusive, of NRS, or in any regulation adopted pursuant thereto, an insurer, organization for managed care, health care provider, third-party administrator

, ~~the~~ employer *or employee leasing company* commits a “minor violation” of any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or a regulation adopted pursuant thereto, if the violation is a single, unintentional violation and the insurer, organization for managed care, health care provider, third-party administrator, ~~the~~ employer *or employee leasing company* agrees, in writing, to correct the violation during the course of an investigation or audit conducted pursuant to those chapters.

2. Except as otherwise provided in this subsection, if an insurer, organization for managed care, health care provider, third-party administrator, ~~the~~ employer *or employee leasing company* agrees, in writing, to correct a single, unintentional violation during the course of an investigation or audit, the Administrator will issue a notice of correction for that violation. The Administrator will not issue a notice of correction pursuant to this subsection if the violation does not require correction or the correction is unnecessary or moot.

3. If an insurer, organization for managed care, health care provider, third-party administrator, ~~the~~ employer *or employee leasing company* does not agree, in writing, to correct a single, unintentional violation during the course of an investigation or audit, the Administrator may impose an administrative fine in an amount not to exceed those amounts set forth in subsection 2 of NRS 616D.120 or order a plan of corrective action to be submitted to the Administrator, or both.

Sec. 10. NAC 616D.405 is hereby amended to read as follows:

616D.405 1. For the purposes of NRS 616D.120, an insurer, organization for managed care, health care provider, third-party administrator, ~~the~~ employer *or employee leasing company* commits an “intentional violation” of any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or any regulation adopted pursuant thereto, if he acts with purpose or

design, otherwise acts to cause the consequences, desires to cause the consequences or believes that the consequences are substantially certain to result from the violation.

2. The Administrator may consider two or more violations of the same or similar provisions of chapters 616A to 617, inclusive, of NRS, or any regulations adopted pursuant thereto, as evidence of an intentional violation. If the Administrator determines that two or more violations constitute an intentional violation, the Administrator will impose an administrative fine as required by subsection 1 of NRS 616D.120 and, if appropriate, order a plan of corrective action to be submitted to the Administrator.

Sec. 11. NAC 616D.411 is hereby amended to read as follows:

616D.411 1. To determine the amount of a benefit penalty required to be paid pursuant to subsection 3 of NRS 616D.120, the Administrator will determine that the violation caused physical or economic harm to the injured employee or his dependents if he finds, by a preponderance of the evidence, that:

- (a) The harm would not have occurred but for the violation;
- (b) The violation was a substantial factor in bringing about the harm; and
- (c) There is no supervening cause that is responsible for bringing about the harm.

2. Physical harm must be established by a preponderance of objective medical evidence in the form of existing medical records or medical records furnished by the claimant.

3. The Administrator will determine the amount of a benefit penalty required to be paid pursuant to subsection 3 of NRS 616D.120 according to the following schedule. In addition to the required minimum benefit penalty of \$5,000, a claimant will be awarded ~~[\$1,625]~~ \$2,000 for each point assessed, but in no event will the amount of the benefit penalty be greater than ~~[\$37,500.]~~ \$50,000.

Points assessed for physical harm:

Temporary minor harm	2 points
Temporary major harm.....	5 points
Permanent minor harm	5 points
Permanent major harm	10 15 points
Death	20 25 points

Points assessed for the amount of compensation found to be due the claimant:

Amount of compensation

\$3,001 - \$5,000.....	1 point
\$5,001 - \$7,000.....	2 points
\$7,001 - \$9,000.....	3 points
\$9,001 - \$11,000.....	4 points
\$11,001 - \$13,000.....	5 points
\$13,001 - \$15,000.....	6 points
\$15,001 - \$17,000.....	7 points
\$17,001 - \$19,000.....	8 points
\$19,001 - \$21,000.....	9 points
An amount that is greater than \$21,000	10 points

Points assessed for prior violations:

One prior violation	1 point
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Two prior violations	3 points
More than two prior violations.....	5 points

Points assessed for economic harm:

Amount of economic harm

\$6,001 - \$7,000.....	1 point
\$7,001 - \$8,000.....	2 points
\$8,001 - \$9,000.....	3 points
\$9,001 - \$10,000.....	4 points
\$10,001 - \$11,000.....	5 points
\$11,001 - \$12,000.....	6 points
\$12,001 - \$13,000.....	7 points
\$13,001 - \$14,000.....	8 points
\$14,001 - \$15,000.....	9 points
More than \$15,000	10 points

4. To determine the number of prior violations of an insurer, organization for managed care, health care provider, third-party administrator , ~~or~~ employer ~~or~~ *employee leasing company*, the Administrator will consider only those fines and benefit penalties imposed pursuant to paragraphs (a) to (e), inclusive, and ~~(h)~~ (i) of subsection 1 of NRS 616D.120 in the immediately preceding 5 years.

5. As used in this section:

(a) “Dependent” means a person who:

- (1) At the time of the violation, is:
 - (I) The spouse of the injured employee;
 - (II) A child of the injured employee and is under 18 years of age; or
 - (III) A child of the injured employee, is 18 years of age or older and is physically or mentally incapacitated and unable to earn a wage; or
 - (2) Is a parent of the injured employee, a child of the injured employee who is 18 years of age or older, a stepchild of the injured employee or a sibling of the injured employee if that person's dependency upon the injured employee is established by a federal income tax return of the injured employee or by any other reliable evidence.
- (b) "Economic harm" includes:
- (1) The loss of money or an item of monetary value; and
 - (2) The deprivation of a reasonable expectation of a financial or monetary advantage.
- (c) "Permanent major harm" means physical harm that:
- (1) Results in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and
 - (2) Is unlikely to be alleviated in spite of medical treatment that a reasonable person is willing to undergo.
- (d) "Permanent minor harm" means physical harm that:
- (1) Does not result in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking,

standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is unlikely to be alleviated in spite of medical treatment that a reasonable person is willing to undergo.

(e) “Physical harm” means death or any physiological disorder or condition, cosmetic disfigurement or anatomic loss affecting one or more of the following body systems:

- (1) The neurological system.
- (2) The musculoskeletal system.
- (3) Special sense organs.
- (4) The respiratory system, including, without limitation, speech organs.
- (5) The cardiovascular system.
- (6) The reproductive system.
- (7) The digestive system.
- (8) The genitourinary system.
- (9) The hemic and lymphatic system.
- (10) The skin.
- (11) The endocrine system.

(f) “Temporary major harm” means physical harm that:

(1) Results in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is likely to be alleviated with or without medical treatment.

(g) “Temporary minor harm” means physical harm that:

(1) Does not result in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is likely to be alleviated with or without medical treatment.

Sec. 12. NAC 616D.415 is hereby amended to read as follows:

616D.415 Except as otherwise provided in chapters 616A to 617, inclusive, of NRS, or in any regulation adopted pursuant thereto:

1. If the Administrator determines that:

(a) An insurer or third-party administrator has failed to comply or has complied in an untimely manner with any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or any regulation adopted pursuant thereto, that requires the insurer or third-party administrator to make a determination regarding the acceptance or denial of a claim for compensation;

(b) An insurer or third-party administrator has failed to comply or has complied in an untimely manner with any provision of chapter 616A, 616B, 616C, 616D or 617 of NRS, or any regulation adopted pursuant thereto, that requires the insurer or third-party administrator to make a payment of benefits to an injured employee;

(c) An insurer or employer has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616B.460 or 616B.461 or NAC 616B.124 to 616B.136, inclusive;

(d) An insurer, organization for managed care, provider of health care, third-party administrator, ~~or~~ employer *or employee leasing company* has failed to comply or has

complied in an untimely manner with any of the provisions of NRS 616A.475, 616B.006, 616B.009 or 617.357 or NAC 616A.410;

(e) A treating physician or chiropractor has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616C.020, 616C.040, subsection 7 of NRS 616C.475 or NRS 617.352, or any regulations adopted pursuant thereto, that require the treating physician or chiropractor to complete a claim for compensation; or

(f) An employer has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616C.045 or 617.354, or any regulation adopted pursuant thereto, that require the employer to complete a report of industrial injury or occupational disease,

↪ and the Administrator determines that the violation was not an intentional violation, the Administrator may impose an administrative fine in an amount not to exceed those amounts set forth in subsection 2 of NRS 616D.120 or order a plan of corrective action to be submitted to the Administrator, or both.

2. If the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, ~~or~~ employer *or employee leasing company* has committed two or more violations of the same or similar provisions of chapters 616A to 617, inclusive, of NRS, or any regulation adopted pursuant thereto, the Administrator may impose an administrative fine in an amount not to exceed those amounts set forth in subsection 2 of NRS 616D.120 or order a plan of corrective action to be submitted to the Administrator, or both.