DIVISION OF INDUSTRIAL RELATIONS

WORKING TOGETHER TO PUT SAFETY AND HEALTH FIRST IN NEVADA

WORKERS' COMPENSATION EMERGING REGULATORY ISSUES

JOINT INTERIM STANDING COMMITTEE ON COMMERCE AND LABOR

TUESDAY, JANUARY 11, 2022

Role of Division of Industrial Relations Workers' Compensation Section (WCS)

- **Mission**
  - Impartially serve the interests of Nevada employers and employees by providing assistance, information, and a fair and consistent regulatory structure focused on:
    - Ensuring the timely and accurate delivery of workers' compensation benefits
    - Ensuring employer compliance with the mandatory coverage provisions

- **Major Responsibilities**
  - Ensure employer compliance with coverage requirements
  - Audit insurers and third-party administrators for compliance
  - Administer Uninsured Employers Claims Account
  - Address complaints from injured workers
  - Assign physicians and chiropractors to conduct disability ratings
  - Maintain panel of treating physicians and chiropractors
  - Publish average monthly wage and medical fee schedule

Emerging Issue: Implementation of 2021 Legislation (SB289)

- C-4, Employee Claim for Compensation (updated)
  - Allows for Electronic Signature
  - Form can be completed by Physician Assistants and Advance Practice Registered Nurses
- C-4A, Release of Medical and Other Information (new)
  - Used when C-4 is signed electronically
  - Meets needs of medical providers for a wet signature
- D-10a & D-10b, Election forms relating to method of payment for PPD (updated)
- D-11, Reaffirmation/Retraction of Lump Sum Request for PPD (updated)
- Regulations pending to conform to Legislative changes

Emerging Issue: Implementation of Cost-of-Living Increases

- **2019 Legislation (AB370 and SB377)**
  - Insurers may request reimbursement for the following COLAs:
    - Annual 2.3% COLA for Survivors' Benefits beginning 1/1/2020 (injuries prior to 7/1/2019)
    - Annual 2.3% COLA for Permanent Total Disability benefits beginning 1/1/2020 (injuries prior to 1/1/2004)
  - Reimbursement funded by assessment on all workers' compensation insurers
- **Challenges**
  - Delinquent COLA Assessment payments delaying WCS ability to reimburse insurers
  - Ensuring all claimants who are entitled to COLA increases are receiving them
- **Steps to Mitigate Challenges**
  - Coordinating with Department of Business and Industry to assess penalties when late payments are made (NAC 616B.740, 616B.7758 and 616B.7767)
  - Conducting Audits of Insurers to ensure COLA increases were made accurately and timely

Emerging Issue: Treating Panel of Physicians and Chiropractors

- **2019 Legislation (SB381)**
  - Requires diversification of panel of treating physicians and chiropractors maintained by WCS to better address injured worker needs
  - Requires all insurer provider lists be a subset of the WCS Treating Panel (including certain requirements)
  - Requires provider lists to be posted on WCS website
- **Challenges**
  - Limited availability of some provider specialties (psychiatrists, neurologists, neurosurgeons, urologists)
- **Steps to Mitigate Challenges**
  - Conducting outreach with health care providers directly and others to encourage health care providers in these specialties to participate in treating Nevada workers' compensation patients.

Emerging Issue: COVID-19

- **COVID-19 Workers' Compensation Claims**
  - 1,900 claims from 3/1/2020 to 12/31/2021
  - 39% of claims have been accepted by insurers and 61% have been denied
- **Challenges**
  - Nevada does not have a presumptive benefit for COVID-19 claims
  - Each claim is reviewed for compensability by insurers on a case-by-case basis
  - Certain diseases already have a conclusive presumption in Nevada for workers' compensation coverage:
    - Heart disease and lung disease for police officers, firefighters and arson investigators (NRS 617.457 and 617.455)
    - Hepatitis for police officers, firefighters, and emergency medical attendants (NRS 617.485 & 617.487)

Emerging Issue: Employer Compliance

- **Legal Requirements**
  - Employers must have workers' compensation coverage
  - Subcontractors, independent contractors and their employees are deemed employees of the principal contractor for purposes of Nevada Industrial Insurance Act
  - Failure to comply may result in administrative fines, premium penalties, stop work orders
- **Challenges**
  - Non-compliance increased during the pandemic due to economic strain on businesses
  - Significant increase in stop work orders and administrative actions
- **Steps to Mitigate Challenges**
  - Partnering with Labor Commissioner and Misclassification Task Force
  - Collaborating with Attorney General's Office
  - Collaborating with municipalities and other organizations to promote early-stage compliance of employers during licensing process

Emerging Issue: Insurer and Third-Party Administrator (TPA) Compliance

- **Challenges**
  - Increase in TPA and insurer non-compliance with statutes and regulations relating to in-state claims office and claims administration requirements
  - Affects ability of injured workers to access information locally
  - Affects delivery of timely and accurate benefits
- **Steps to Mitigate Challenges**
  - Addressing claims practices as part of insurer audits
  - Providing outreach and communications to clarify Nevada requirements
  - Reviewing compliance as part of TPA license applications
  - Coordinating and sharing information with the Division of Insurance

Emerging Issue: Benefit Penalties

- **What is a Benefit Penalty Complaint?**
  - Injured workers file benefit penalty complaints with WCS when they believe the insurer/TPA has made errors in administration of a claim (bad faith)
  - WCS investigates, makes determinations, and issues penalties up to $50,000 (NRS 616D.120)
  - Appeals of determinations are handled by Department of Administration Hearings Division
- **Challenges**
  - Large influx of benefit penalty complaints: DIR received 397 BP complaints from January 1, 2018 through December 31, 2021
  - Some complaints lack specificity, resulting in lengthy review times
  - WCS has had difficulty attracting and retaining qualified staff to handle these complex cases
- **Steps to Mitigate Challenges**
  - Hiring a second full-time Compliance/Audit Investigator dedicated to Benefit Penalty Complaints
  - Screening complaints for deficiencies
  - Reviewing Audit/Benefit Penalty investigation procedure to increase efficiency
  - DIR Legal Section providing specialized training to Compliance/Audit Investigators

Emerging Issue: Technology Improvements

- **Database implemented in 2017**
  - Claims and Regulatory Database System (CARDS)
  - Insurers and TPAs use system to submit information on each workers' compensation claim
  - WCS staff use CARDS to monitor claims data and to track enforcement and auditing efforts
- **Phase II Improvements Being Explored**
  - Conducting needs analysis and researching best practices
  - Stakeholder task force being convened in January
- **Potential CARDS Enhancements**
  - Move Request for Rating Physicians process online (Form D-35)
  - Add workers' compensation assessment information to insurer home page
  - Expand functionality for areas such as Subsequent Injury, Benefit Penalty, and Legal functions
  - Streamline processes, including auto-generating letters
  - Create more functionality to do internal updates and reduce future programming costs
  - Enhance electronic media storage capability to promote agency paper reduction goals