PROPOSED REGULATION OF THE ADMINISTRATOR OF

THE DIVISION OF INDUSTRIAL RELATIONS OF THE

DEPARTMENT OF BUSINESS AND INDUSTRY

LCB File No. R118-02

August 5, 2002

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

AUTHORITY: §§1, 4-13,18 and 29, NRS 616A.400; §2, NRS 616A. 400 and 616A.417; §3, NRS 616A.400 and 616B.012; §14, NRS 616A.400, 616B.587 and 616B.590; §15, NRS 616A.400 and 616C.220; §§16 and 17, NRS 616A.400 and 616C.090; §§19 and 20, NRS 616A.400 and 616C.490; §§21, 22 and 29, NRS 616A.400 and 616C.260; §23, NRS 616A.400, 616C.260 and 616C.365; §§24-28, 616A.400 and 616D.120.

Section 1. NAC 616A.430 is hereby amended to read as follows:

616A.430 A brief explanation of the procedure for obtaining clarification of NAC 616A.420, 616C.091, 616C.094, [~~616C.182 to 616C.218, inclusive,~~] 616C.423, 616C.447 or 616C.502, or relief from the strict application of any of their terms***,*** may be obtained from the Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada [~~89710.~~] ***89703.***

Sec. 2. NAC 616A.480 is hereby amended to read as follows:

616A.480 1. The following posters and forms or data must be used by an insurer, employer, injured employee, provider of health care, organization for managed care or third-party administrator in the administration of claims for workers' compensation:

(a) D-1, Informational Poster - Displayed by Employer. The informational poster must include the language contained in Form D-2, and the name, business address, telephone number and contact person of:

(1) The insurer;

(2) The third-party administrator, if applicable;

(3) The organization for managed care or providers of health care with whom the insurer has contracted to provide medical and health care services, if applicable; and

(4) The name, business address and telephone number of the insurer's or third-party administrator's adjuster in this state that is located nearest to the employer's place of business.

(b) D-2, Brief Description of Your Rights and Benefits if You Are Injured on the Job.

(c) C-1, Notice of Injury or Occupational Disease (Incident Report). One copy of the form must be delivered to the injured employee, and one copy of the form must be retained by the employer. The language contained in Form D-2 must be printed on the reverse side of the employee's copy of the form, or provided to the employee as a separate document with an affirmative statement acknowledging receipt.

(d) C-3, Employer's Report of Industrial Injury or Occupational Disease. A copy of the form must be delivered to or the form must be filed by electronic transmission with the insurer or third-party administrator. The form signed by the employer must be retained by the employer. A copy of the form must be delivered to the injured employee. If the employer files the form by electronic transmission, the employer must:

(1) Transmit all fields of the form that are required to be completed, as prescribed by the administrator.

(2) Sign the form with an electronic symbol representing the signature of the employer that is:

(I) Unique to the employer;

(II) Capable of verification; and

(III) Linked to data in such a manner that the signature is invalidated if the data is altered.

(3) Acknowledge on the form that he will maintain the original report of industrial injury or occupational disease for 3 years.

FLUSH If the employer moves from or ceases operation in this state, the employer shall deliver the original form to the insurer for inclusion in the insurer's file on the injured employee within 30 days after the move or cessation of operation.

(e) C-4, Employee's Claim for Compensation/Report of Initial Treatment. A copy of the form must be delivered to the insurer or third-party administrator. A copy of the form must be delivered to or the form must be filed by electronic transmission with the employer. A copy of the form must be delivered to the injured employee. The language contained in Form D-2 must be printed on the reverse side of the injured employee's copy of the form or provided to the injured employee as a separate document with an affirmative statement acknowledging receipt. The original form signed by the injured employee and the physician or chiropractor who conducted the initial examination of the injured employee must be retained by that physician or chiropractor. If the physician or chiropractor who conducted the initial examination files the form by electronic transmission, the physician or chiropractor must:

(1) Transmit all fields of the form that are required to be completed, as prescribed by the administrator.

(2) Sign the form with an electronic symbol representing the signature of the physician or chiropractor that is:

(I) Unique to the physician or chiropractor;

(II) Capable of verification; and

(III) Linked to data in such a manner that the signature is invalidated if the data is altered.

(3) Acknowledge on the form that he will maintain the original form for the claim for compensation for 3 years.

FLUSH If the physician or chiropractor who conducted the initial examination moves from or ceases treating patients in this state, the physician or chiropractor shall deliver the original form to the insurer for inclusion in the insurer's file on the injured employee within 30 days after the move or cessation of treatment of patients.

(f) D-5, Wage Calculation Form for Claims Agent's Use.

(g) D-6, Injured Employee's Request for Compensation.

(h) D-7, Explanation of Wage Calculation.

(i) D-8, Employer's Wage Verification Form.

(j) D-9(a), Permanent Partial Disability Award Calculation Worksheet.

(k) D-9(b), Permanent Partial Disability Award Calculation Worksheet for Disability Over 25 Percent Body Basis.

(l) D-10(a), Election of Method of Payment of Compensation.

(m) D-10(b), Election of Method of Payment of Compensation for Disability Greater than 25 Percent.

(n) D-11, Reaffirmation of Lump Sum Request.

(o) D-12(a), Request for Hearing - Contested Claim.

(p) D-12(b), Request for Hearing - Uninsured Employer.

(q) D-13, Injured Employee's Right to Reopen a Claim Which Has Been Closed.

(r) D-14, Permanent Total Disability Report of Employment.

(s) D-15, Election for Nevada Workers' Compensation Coverage for Out-of-State Injury.

(t) D-16, Notice of Election for Compensation Benefits Under the Uninsured Employer Statutes.

(u) D-17, Employee's Claim for Compensation - Uninsured Employer.

(v) D-18, Assignment of Claim for Workers' Compensation - Uninsured Employer.

(w) D-21, Fatality Report.

(x) D-22, Notice to Employees - Tip Information.

(y) D-23, Employee's Declaration of Election to Report Tips.

(z) D-24, Request for Reimbursement of Expenses for Travel and Lost Wages.

(aa) D-25, Affirmation of Compliance with Mandatory Industrial Insurance Requirements.

(bb) D-26, Application for Reimbursement of Claim-Related Travel Expenses.

(cc) D-27, Interest Calculation for Compensation Due.

(dd) D-28, Rehabilitation Lump Sum Request.

(ee) D-29, Lump Sum Rehabilitation Agreement.

(ff) D-30, Notice of Claim Acceptance.

(gg) D-31, Notice of Intention to Close Claim.

(hh) D-32, Authorization Request for Additional Chiropractic Treatment.

(ii) D-33, Authorization Request for Additional Physical Therapy Treatment.

(jj) D-34, ~~[Health Care Financing Administration]~~ ***CMS*** 1500 Billing Form.

(kk) D-35, Request for a Rotating Rating Physician or Chiropractor.

(ll) D-36, Request for Additional Medical Information and Medical Release.

(mm) D-37, Insurer's Subsequent Injury Checklist.

(nn) D-38, Injured Worker Index System Claims Registration Document.

(oo) D-39, Physician's Progress Report - Certification of Disability.

(pp) D-40cc, Industrial Insurance Regulation Section Noncompliance Premium.

(qq) D-40lv, Industrial Insurance Regulation Section Noncompliance Premium.

(rr) D-41, International Association of Industrial Accident Boards and Commissions POC 1.

(ss) D-43, Employee's Election to Reject Coverage and Election to Waive the Rejection of Coverage for Excluded Persons.

(tt) D-44, Election of Coverage by Employer; Employer Withdrawal of Election of Coverage.

(uu) D-45, Sole Proprietor Coverage.

(vv) D-46, Temporary Partial Disability Calculation Worksheet.

(ww) D-47, Noncompliance Notice.

(xx) D-48, Proof of Coverage Notice.

(yy) D-49, Information Page.

(zz) D-50, Policy Termination, Cancellation and Reinstatement Notice.

(aaa) D-51, Employer's Request for Hearing of Administrator's Determination.

(bbb) D-52, CMS (UB-92).

(ccc) D-53, Alternative Choice of Physician or Chiropractor.

(ddd) D-54, Alternative Choice of Treating Physician or Chiropractor.

(eee) D-55, Alternative Choice of Specialist.

(fff) D-56, Request for Information Concerning Previous Disability.

(ggg) D-57, Occupational Disease Claim Reporting.

2. In addition to the forms specified in subsection 1, the following forms must be used by each insurer in the administration of a claim for an occupational disease:

(a) OD-1, Firemen and Police Officers' Medical History Form.

(b) OD-2, Firemen and Police Officers' Lung Examination Form.

(c) OD-3, Firemen and Police Officers' Extensive Heart Examination Form.

(d) OD-4, Firemen and Police Officers' Limited Heart Examination Form.

(e) OD-5, Firemen and Police Officers' Hearing Examination Form.

(f) OD-6, Firemen and Police Officers' Sample Letter.

(g) OD-7, Info

Sec. 3. NAC 616B.008 is hereby amended to read as follows:

616B.008 1. To obtain information for the proper presentation of his claim in a proceeding held pursuant to chapters 616A to 616D, inclusive, of NRS, an injured employee or a person who has been authorized by the injured employee to represent him must deliver a written request to his insurer [.] ***or employer.*** The insurer ***or employer*** shall provide such information to the injured employee or his authorized representative within 30 days after receipt of the written request. If, at the time of receipt of the written request from the injured employee or his authorized representative, the requested information is in the possession of a third-party administrator ***,*** or an organization for managed care ***or a provider of health care*** with whom the insurer has contracted, the insurer shall take all reasonable steps necessary to obtain such information.

2. To obtain confidential information pursuant to subsection 3 of NRS 616B.012, the requesting agency, department or board must deliver to the insurer a written request that must:

(a) Be written on the official letterhead of the requesting agency, department or board;

(b) State the purpose for which the requesting agency, department or board will use the requested information;

(c) Contain all pertinent information available to the requesting agency, department or board to identify:

(1) The injured employee, including, without limitation, his name, social security number, date of birth and the date of his injury; or

(2) The employer, including, without limitation, his name, the name and address of the business, the names of the owners of the business and the employer's policy number; and

(d) Contain any other information that the insurer may need to process the request.

FLUSH The insurer may require additional information to process the request. The insurer shall provide the requested confidential information to the requesting agency, department or board within 30 days after receiving the written request.

3. If a request requires the insurer to report on more than one employer or more than one injured employee, the head of the requesting agency, department or board must sign the request. If a request requires the insurer to report on only one employer or injured employee, either the head of the requesting agency, department or board or his designated agent must sign the request.

4. Upon receipt of a written request made pursuant to the provisions of subsection 5 of NRS 616B.012 by the chief executive officer of any law enforcement agency of this state, the administrator will instruct the insurer to provide the information requested to the chief executive officer within 30 days after receiving the instructions from the administrator. The insurer shall provide the information requested within 30 days after receipt of such an instruction from the administrator.

5. Any fee charged for providing information pursuant to this section and NRS 616B.012 may not exceed 10 cents per page. No fee may be charged for duplicate copies.

Sec. 4. NAC 616B.100 is hereby amended to read as follows:

616B.100 As used in NAC 616B.100 to 616B.148, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~[616B.103]~~ ***616B.106*** to 616B.118, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NAC 616B.112 is hereby amended to read as follows:

616B.112 "Notice of error" means a notice issued by the administrator or designated agent to a private carrier ~~[or an association]~~ that proof of coverage submitted by the private carrier ~~[or association]~~ has been accepted but requires correction.

Sec. 6. NAC 616B.115 is hereby amended to read as follows:

616B.115 "Notice of rejection" means a notice issued by the administrator or designated agent to a private carrier ~~[or an association]~~ that proof of coverage submitted by the private carrier ~~[or association]~~ has not been accepted and requires correction.

Sec. 7. NAC 616B.121 is hereby amended to read as follows:

616B.121 The administrator hereby adopts by reference the following publications:

1. *IAIABC EDI Implementation Guide for Proof of Coverage*, which is published by the International Association of Industrial Accident Boards and Commissions. A copy of the publication may be obtained from the International Association of Industrial Accident Boards and Commissions, ~~[1201 Wakarusa Drive, Suite C-3, Lawrence, Kansas 66049,]~~ ***5610 Medical Circle, Suite 14, Madison, Wisconsin 53719,*** for the price of ~~[$195]~~ ***$50*** for members and ~~[$395]~~ ***$95*** for nonmembers.

2. *Workers Compensation Policy Data Reporting Manual*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained from the National Council on Compensation Insurance, Products and Services Department, ~~[750 Park~~

of Commerce Drive,] ***901 Peninsula Corporate Circle,*** Boca Raton, Florida 33487, for the price of [$96 for members and $124 for nonmembers.] ***$120 for affiliates and $155 for nonaffiliates.***

3. *Basic Manual for Workers Compensation and Employers Liability Insurance*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained from the National Council on Compensation Insurance, Products and Services Department, [750 Park of Commerce Drive,] ***901 Peninsula Corporate Circle,*** Boca Raton, Florida 33487, for the price of [$86 for members and $119 for nonmembers.] ***$108 for affiliates and $149 for nonaffiliates.***

4. *Forms Manual of Workers Compensation and Employers Liability Insurance*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained from the National Council on Compensation Insurance, Products and Services Department, [750 Park of Commerce Drive,] ***901 Peninsula Corporate Circle,*** Boca Raton, Florida 33487, for the price of [$108 for members and $217 for nonmembers.] ***$135 for affiliates and $271 for nonaffiliates.***

5. *Electronic Transmission User's Guide*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained, free of charge, from the National Council on Compensation Insurance, Products and Services Department [, 750 Park of Commerce Drive,] ***901 Peninsula Corporate Circle,*** Boca Raton, Florida 33487.

6. *Workers Compensation Data Specifications Manual*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained from the National Council on Compensation Insurance, Products and Services Department, [750 Park of Commerce Drive,] ***901 Peninsula Corporate Circle,*** Boca Raton, Florida 33487, for the price of [$62.] ***$78.***

Sec. 8. NAC 616B.124 is hereby amended to read as follows:

616B.124 For the purposes of complying with the provisions of subsection ~~[3 of NRS 616B.033 and NRS 616B.460,]~~ ***2 of NRS 616B.460 and NRS 616B.461,*** a private carrier ~~[or an association]~~ shall submit proof of coverage to the designated agent.

Sec. 9. NAC 616B.127 is hereby amended to read as follows:

616B.127 1. A private carrier shall submit proof of coverage to the designated agent within 15 days after the effective date of the:

(a) Issuance of a policy or binder of industrial insurance;

(b) Renewal of a policy of industrial insurance;

(c) Reinstatement of a policy of industrial insurance;

(d) Reissuance of a policy of industrial insurance;

(e) Cancellation of a policy of industrial insurance;

(f) Nonrenewal of a policy of industrial insurance; or

(g) Issuance of any endorsement of a policy of industrial insurance which materially affects the proof of coverage required by NAC 616B.100 to 616B.148, inclusive.

2. If a binder is submitted as proof of coverage pursuant to paragraph (a) ***of subsection 1*** and the binder is replaced by a policy of industrial insurance, proof of coverage for the policy must be submitted to the designated agent before the expiration of the binder.

3. A private carrier shall submit proof of coverage to the designated agent within 15 days after receiving notice that an employer has changed insurers or has canceled his policy with that carrier.

Sec. 10. NAC 616B.133 is hereby amended to read as follows:

616B.133 1. ~~[An association shall submit proof of coverage to the designated agent by:~~

(a) The United States Postal Service or any other mail delivery service by submitting Form D-41, International Association of Industrial Accident Boards and Commissions POC 1; or

(b) Electronic transmission.

2.] A private carrier shall submit proof of coverage to the designated agent by:

(a) Electronic transmission; or

(b) The United States Postal Service or any other mail delivery service.

[3.] ***2.*** If the private carrier does not use Form D-41, International Association of Industrial Accident Boards and Commissions POC 1 to submit:

(a) Information relating to a binder, it shall submit Form D-48, Proof of Coverage Notice, and a schedule of the names, addresses and federal employer identification numbers of the employers covered by the binder.

(b) Information relating to a policy, it shall submit Form D-49, Information Page.

(c) Information relating to the termination, cancellation or reinstatement of a policy, it shall submit Form D-50, Policy Termination, Cancellation and Reinstatement Notice.

[4.] ***3.*** As used in this section, "electronic transmission" means the sending of information by electronic means in the manner prescribed by the designated agent, including, without limitation, by a magnetic tape, cartridge, mainframe or personal computer.

Sec. 11. NAC 616B.136 is hereby amended to read as follows:

616B.136 ***1.*** An employer shall, upon request, provide proof of coverage to its insurer ***and to the administrator*** in the manner prescribed by the administrator. If the employer fails to provide that information to the insurer, the insurer may notify the administrator of the failure of the employer to provide the information.

2. If an employer changes insurers, the employer shall notify his previous insurer of the cancelation of the former policy within 10 days after the effective date of the change.

Sec. 12. NAC 616B.139 is hereby amended to read as follows:

616B.139 The designated agent may charge a private carrier [or an association] a fee in an amount that does not exceed the cost of receiving, processing and submitting proof of coverage required by the administrator. The designated agent shall provide to the private carrier ***,*** [or association,] at no cost, instructions for submitting proof of coverage.

Sec. 13. NAC 616B.707 is hereby amended to read as follows:

616B.707 1. The division will consider expenditures for the following as expenditures for claims:

(a) A surgeon, assisting surgeon, anesthesiologist or consulting physician.

(b) Charges by a hospital.

(c) Treatment by a physician or chiropractor.

(d) X-ray films, computerized axial tomography (CAT) scans, myelograms, magnetic resonance imaging, and other diagnostic tests and procedures.

(e) Physical therapy.

(f) Prescribed drugs and medications, eyeglasses, dental work, prostheses, orthotic devices and corrective shoes by prescription.

(g) Travel to obtain medical care or supplies.

(h) Any other accident benefits.

(i) Compensation for a permanent total, temporary total, permanent partial or temporary partial disability.

(j) Costs of vocational rehabilitation services for an injured employee.

(k) Death benefits.

(l) Burial expenses.

2. The division will not consider the following expenditures to be expenditures for claims:

(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) Payment of claims in connection with the uninsured employers' claim fund.

(f) 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.

(g) Costs incurred in a claim that is ultimately denied.

3. The value of clinical services furnished by an insurer for industrial injuries or illnesses must be computed and reported pursuant to ~~[NAC 616C.182 to 616C.230, inclusive.]~~ ***the schedule of fees and charges for accident benefits adopted pursuant to subsection 2 of NRS 616C.260.***

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 expenditures for claims for which a private carrier may receive reimbursement from the subsequent injury fund 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.

2. The value of accident benefits furnished by a private carrier for industrial injuries or illnesses must be computed and reported pursuant to ~~[NAC 616C.182 to 616C.230, inclusive.]~~ ***the schedule of fees and charges for accident benefits adopted pursuant to subsection 2 of NRS 616C.260.***

Sec. 15. Chapter 616C of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the division uses the services of an attorney employed by the division for the collection of money due pursuant to NRS 616C.220, the division may require the uninsured employer to pay attorney's fees in an amount equal to the gross hourly wage and all benefits paid to that employee by the division while providing those services.

2. If the division uses the services of an attorney who is not employed by the division for the collection of money due pursuant to NRS 616C.220, the division may require the uninsured employer to pay the actual amount of the attorney's fees charged.

Sec. 16. NAC 616C.006 is hereby amended to read as follows:

616C.006 The administrator will issue a warning to a physician or chiropractor on the panel of physicians and chiropractors, or suspend or remove a physician or chiropractor from the panel, for sufficient cause. Sufficient cause includes, but is not limited to, the following:

1. Fraudulent billing or reporting.

2. Failure to observe the rules of treatment set forth in [NAC 616C.129.] ***the schedule of fees and charges for accident benefits adopted pursuant to subsection 2 of NRS 616C.260.***

3. Disciplinary action taken against the physician or chiropractor by the applicable licensing authority, representatives of Medicare or Medicaid, or a hospital for fraud, abuse or the quality of care provided.

4. Unprofessional conduct or discriminatory treatment in the care and treatment of patients.

5. Use of any treatment which is not sanctioned by his peers or medical authority as being beneficial for the injury or disease involved.

6. Failure to comply with any order of the division issued pursuant to [NAC 616C.126 to 616C.144, inclusive.] ***the schedule of fees and charges for accident benefits adopted pursuant to subsection 2 of NRS 616C.260.***

7. Commission of a felony for which he is convicted in a state or federal court.

8. Commission of any offense relating to drug abuse, including excessive prescription of drugs, for which he is convicted in a state or federal court.

9. A violation of NRS 616C.040 or 616C.135.

10. Continued failure to secure authorization for diagnostic tests which require prior authorization.

11. Continued failure to secure authorization and consultations for surgical procedures.

12. Engaging in any action that the administrator determines to be detrimental to an injured employee, an employer, an insurer or the program of industrial insurance.

Sec. 17. NAC 616C.030 is hereby amended to read as follows:

616C.030 [1.] Upon the receipt of a ***verbal or written*** request from an injured employee ***,*** [or] his representative, [the:

(a) Employer;

(b) Insurer;

(c)] ***or his treating physician or chiropractor, the:***

1. Employer;

2. Insurer;

3. Third-party administrator; or

[(d)] ***4.*** Organization for managed care,

FLUSH shall provide a list of providers of health care who are authorized to provide medical and health care services to the injured employee.

[2. If the request made pursuant to subsection 1 is in writing, the:

(a) Employer;

~~(b) Insurer;~~

~~(c) Third-party administrator; or~~

~~(d) Organization for managed care,~~

FLUSH ~~shall provide the list to the injured employee within 3 working days after the date it receives the request.]~~

Sec. 18. NAC 616C.097 is hereby amended to read as follows:

616C.097 1. Any written notice of a determination of an insurer who has contracted with an organization for managed care that relates to accident benefits must include at the bottom of the notice a statement in substantially the following form:

FLUSH If you disagree with the above determination, sign, date, and briefly explain on the bottom of this notice the reason for your appeal and return this notice to your insurer within 70 days after the date on which the ~~[notice was mailed by the insurer.]~~ ***determination was made.***

2. Any written notice of a determination of an insurer that relates to benefits, other than accident benefits provided by an insurer who has contracted with an organization for managed care, must include at the bottom of the notice a statement in substantially the following form:

FLUSH If you disagree with the above determination, sign, date, and briefly explain on the bottom of this notice the reason for your appeal and return it to the Hearing Officer at the Department of Administration within 70 days after the date on which the notice was mailed by the insurer.

Sec. 19. NAC 616C.103 is hereby amended to read as follows:

616C.103 1. For purposes of determining whether an injured employee is stable and ratable and entitled to an evaluation to determine the extent of any permanent impairment pursuant to this section and NRS 616C.490, the division interprets the term:

(a) "Stable" to include, without limitation, a written indication from a physician or chiropractor that the industrial injury or occupational disease of the injured employee:

(1) Is stationary, permanent or static; or

(2) Has reached maximum medical improvement.

(b) "Ratable" to include, without limitation, a written indication from a physician or chiropractor that the medical condition of the injured employee may have:

(1) Resulted in a loss of motion, sensation or strength in a body part of the injured employee; or

(2) Resulted in a loss of or abnormality to a physiological or anatomical structure or bodily function of the injured employee.

2. ***If an insurer proposes that an injured employee agree to a rating physician or chiropractor chosen by the insurer, the insurer shall inform the injured employee in writing that the injured employee:***

(a) Is not required to agree with the selection of that physician or chiropractor; and

(b) May request that the rating physician or chiropractor be selected in accordance with subsection 3 and NRS 616C.490.

3. An insurer shall comply with subsection 2 of NRS 616C.490, within the time prescribed in that subsection for the scheduling of an appointment, by:

(a) Requesting a physician or chiropractor from the list of qualified rating physicians and chiropractors designated by the administrator to evaluate the injured employee and determine the extent of any permanent impairment or, if the injured employee and insurer have agreed to a rating physician or chiropractor pursuant to subsection 2 of NRS 616C.490, by submitting a written copy of that agreement and the form designated in NAC 616A.480 as D-35, Request for a Rotating Rating Physician or Chiropractor, to the industrial insurance regulation section within 30 days after the insurer has received the statement from a physician or chiropractor that the injured employee is ratable and stable;

(b) Mailing written notice to the injured employee of the date, time and place of the appointment for the rating evaluation; and

(c) At least 3 working days before the rating evaluation, providing to the assigned rating physician or chiropractor from the insurer's file concerning the injured employee's claim:

(1) All reports or other written information concerning the injured employee's claim produced by a physician, chiropractor, hospital or other provider of health care, including the statement from the treating physician or chiropractor that the injured employee is stable and ratable, surgical reports, diagnostic, laboratory and radiography reports and information concerning any preexisting condition relating to the injured employee's claim;

(2) Any evidence ~~[of a previous award of workers' compensation issued in or outside of this state for the injury or occupational disease that is the subject of the injured employee's claim;]~~ ***or documentation of any previous evaluations performed to determine the extent of any of the injured employee's disabilities and any previous injury, disease or condition of the injured employee that is relevant to the evaluation being performed;***

(3) The form designated in NAC 616A.480 as C-4, Employee's Claim for Compensation/Report of Initial Treatment; [and]

(4) The form designated in NAC 616A.480 as D-35, Request for a Rotating Rating Physician or Chiropractor [.

3.] ***; and***

(5) The form designated in NAC 616A.480 as D-56, Request for Information Concerning Previous Disability.

4. An insurer shall pay for the cost of travel for an injured employee to attend a rating evaluation as required by NAC 616C.105.

[4.] ***5.*** Except as otherwise provided in subsection [6,] ***7,*** if the rating physician or chiropractor finds that the injured employee has a ratable impairment, the insurer shall, within the time prescribed by NRS 616C.490, offer the injured employee the award to which he is entitled. The insurer shall make payment to the injured employee:

(a) Within 20 days; or

(b) If there is any child support obligation affecting the injured employee, within 35 days,

FLUSH after it receives the properly executed award papers from the injured employee or his representative.

[5.] ***6.*** If the rating physician or chiropractor determines that the permanent impairment may be apportioned pursuant to NAC 616C.490, the insurer shall advise the injured employee of the amount by which the rating was reduced and the reasons for the reduction.

[6.] ***7.*** If the insurer disagrees in good faith with the result of the rating evaluation, the insurer shall, within the time prescribed in NRS 616C.490:

(a) Offer the injured employee the portion of the award, in installments, which it does not dispute;

(b) Provide the injured employee with a copy of each rating evaluation performed of him; and

(c) Notify the injured employee of the specific reasons for the disagreement and his right to appeal. The notice must also set forth a detailed proposal for resolving the dispute that can be executed in 75 days, unless the insurer demonstrates good cause for why the proposed resolution will require more than 75 days.

~~[7.]~~ ***8.*** The injured employee must receive a copy of the results of each rating evaluation performed of him before accepting an award for a permanent partial disability.

~~[8.]~~ ***9.*** As used in this section, "award papers" means the following forms designated in NAC 616A.480, as appropriate:

(a) D-10(a), Election of Method of Payment of Compensation.

(b) D-10(b), Election of Method of Payment of Compensation for Disability Greater than 25 Percent.

(c) D-11, Reaffirmation of Lump Sum Request.

Sec. 20. NAC 616C.105 is hereby amended to read as follows:

616C.105 1. An insurer who requests that an injured employee submit to a rating evaluation pursuant to NRS 616C.490 shall include with the notice required pursuant to subsection ~~[2]~~ ***3*** of NAC 616C.103:

(a) Payment for the cost of travel for the injured employee;

(b) A receipt evidencing payment for the cost of travel for the injured employee; or

(c) Any combination thereof.

2. For the purpose of determining the cost of travel for the injured employee:

(a) The insurer shall pay for the cost of travel incurred by the injured employee if the injured employee is required to travel at least 20 miles one way from:

(1) His residence to the place where the rating evaluation will be conducted; or

(2) His place of employment to the place where the rating evaluation will be conducted if the injured employee is required to be examined during his regular working hours.

(b) Except as otherwise provided in this section, payment for the cost of travel must be computed at a rate equal to:

(1) The mileage allowance for state officers and employees who use their personal vehicles for the convenience of this state; or

(2) The cost of travel actually incurred by the injured employee, if the injured employee consents to payment at that rate and the cost of travel is not more than the amount to which the injured employee would otherwise be entitled pursuant to subparagraph (1).

(c) Except as otherwise provided in this section, if the injured employee is required to travel before 7:00 a.m. or between 11:30 a.m. and 1:30 p.m., or cannot return to his residence or place of employment before 7:00 p.m., the insurer shall pay the injured employee an allowance for meals equal to:

(1) The rate allowed for state officers and employees; or

(2) The cost actually incurred by the injured employee for meals, if the injured employee consents to payment at that rate and the cost is not more than the amount to which the injured employee would otherwise be entitled pursuant to subparagraph (1).

(d) If an injured employee is required to travel at least 50 miles one way from his residence or place of employment and is required to remain away from his residence or place of employment overnight, the insurer shall pay the injured employee:

(1) The per diem allowance authorized for state officers and employees; or

(2) The cost of travel actually incurred by the injured employee,

FLUSH whichever is less.

(e) If the injured employee receives the prior approval of the insurer requesting the rating evaluation, the insurer shall pay for the cost of travel by airplane if the time, distance, convenience or cost of travel justifies the injured employee's travel by airplane.

(f) If the injured employee moves outside this state or to a new location within this state after filing a claim for compensation, the insurer shall pay the cost of travel for the injured employee to attend the rating evaluation, not to exceed $1,000.

(g) A person who travels with an injured employee is not entitled to receive payment for the cost of travel to accompany the injured employee unless there is a medical necessity that prevents the injured employee from traveling alone. The treating physician or chiropractor of the injured employee shall provide a written explanation of the medical necessity.

Sec. 21. NAC 616C.117 is hereby amended to read as follows:

616C.117 As used in NAC 616C.117 to [~~616C.230,~~] ***616C.156,*** inclusive, unless the context otherwise requires, the words and terms defined in NAC 616C.118 and 616C.119 have the meanings ascribed to them in those sections.

Sec. 22. NAC 616C.120 is hereby amended to read as follows:

616C.120 The provisions of NAC 616C.123 to [616C.230,] ***616C.156,*** inclusive, do not prohibit or otherwise impair or interfere with the right of an injured employee to inspect or obtain his health care records pursuant to the provisions of NRS 629.061.

Sec. 23. NAC 616C.150 is hereby amended to read as follows:

616C.150 1. The insurer shall reimburse an injured employee for the cost of transportation ***to and from the place where he receives health care*** if he is required to travel 20 miles or more, one way, from:

(a) His residence to the place where he receives health care; or

(b) His place of employment to the place where he receives health care if the care is required during his normal working hours.

2. The insurer shall reimburse an injured employee for the cost of transportation if he is required to travel 20 miles or more, one way, from his residence or place of employment to a place of hearing designated by the insurer or the department of administration if the hearing concerns an appeal by the employer or insurer from a decision in favor of the injured employee and the decision is upheld on appeal.

3. An injured employee who does not qualify for reimbursement under paragraph (a) or (b) of subsection 1 but is required to travel a total of 40 miles or more in any 1 week for health care or for attendance at a rehabilitation center designated by the insurer is entitled to be reimbursed for the cost of his transportation.

4. Except as otherwise provided in subsection 6, reimbursement for the cost of transportation must be computed at a rate equal to:

(a) The mileage allowance for state employees who use their personal vehicles for the convenience of the state; or

(b) The expense actually incurred by the injured employee for transportation, if the injured employee consents to reimbursement at this rate and the expense is not greater than the amount to which the injured employee would otherwise be entitled pursuant to paragraph (a).

5. Except as otherwise provided in subsection 6, if an injured employee must travel before 7 a.m. or between 11:30 a.m. and 1:30 p.m. or cannot return to his residence or place of employment until after 7 p.m., or any combination thereof, reimbursement for meals required to be purchased must be computed at a rate equal to:

(a) That allowed for state employees; or

(b) The expense actually incurred by the injured employee for meals, if the injured employee consents to reimbursement at this rate and the expense is not greater than the amount to which the injured employee would otherwise be entitled pursuant to paragraph (a).

6. The insurer shall reimburse an injured employee for his expenses of travel if he is required to travel 50 miles or more, one way, from his residence or place of employment and is required to remain away from his residence or place of employment overnight. Reimbursement must be computed at a rate equal to:

(a) The per diem allowance authorized for state employees; or

(b) The expenses actually incurred by the injured employee,

FLUSH whichever is less.

7. A claim for reimbursement of expenses governed by this section may be disallowed unless it is submitted to the insurer within 60 days after the expenses are incurred.

Sec. 24. Chapter 616D of NAC is hereby amended by adding thereto the provisions set forth as sections 25, 26 and 27 of this regulation.

Sec. 25. ***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. Except as otherwise provided in subsection 4, 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 $1,000 for each point assessed, but in no event will the amount of the benefit penalty be greater than $25,000.

Points assessed for physical harm:

Temporary minor harm . . . . 2 points

Temporary major harm . . . . 5 points

Permanent minor harm . . . . 5 points

Permanent major harm . . . . 10 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

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

$13,011 - $14,000 . . . . 8 points

$14,001 - $15,000 . . . . 9 points

More than $15,000 . . . . 10 points

4. In the event of the death of an injured employee or his dependent, the administrator will award the claimant a benefit penalty of $25,000.

5. To determine the number of prior violations of an insurer, organization for managed care, health care provider, third-party administrator or employer, the administrator will consider only those fines and benefit penalties imposed pursuant to NRS 616D.120 in the immediately preceding 3 years.

6. 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 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. 26. *1. For the purposes of NRS 616D.120, NAC 616D.400 and section 27 of this regulation, an insurer, organization for managed care, health care provider, third-party administrator or employer commits an "intentional violation" of any provision of this chapter or chapter 616A, 616B, 616C 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. 27. ***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 this chapter or chapter 616A, 616B, 616C 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 this chapter or chapter 616A, 616B, 616C 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, organization for managed care, provider of health care, third-party administrator or employer has failed to comply or has complied in an untimely manner with any of the provisions of NRS 616A.475, 616B.006 or 616B.009, or NAC 616A.410;

(d) 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, subsection 7 of NRS 616C.475, or NRS 616C.040 or 617.352, or any regulations adopted pursuant thereto, that require the treating physician or chiropractor to complete a claim for compensation; or

(e) 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,

FLUSH ***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 has committed two or more violations of the same or similar provisions of chapters 616A to 617, inclusive, of NRS, or any regulations 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.

Sec. 28. NAC 616D.400 is hereby amended to read as follows:

616D.400 ***1.*** For the purposes of subsection 2 of NRS 616D.120, ~~[“minor violation” means:~~

~~1. Except as otherwise provided in NAC 616D.4399, a violation]~~ ***an insurer, organization for managed care, health care provider, third-party administrator or employer commits a "minor violation"*** of any provision of ***this chapter or*** chapter 616A, 616B, 616C ~~[, 616D]~~ or 617 of NRS ***,*** or a regulation adopted pursuant thereto ~~[for which an administrative fine or other penalty is not specifically provided; or~~

~~2. A violation of any provision set forth in NAC 616D.400 to 616D.440, inclusive.]~~ ***, if the violation is a single, unintentional violation and the insurer, organization for managed care, health care provider, third-party administrator or employer agrees, in writing, to correct the violation during the course of an investigation or audit conducted pursuant to those chapters.***

2. If an insurer, organization for managed care, health care provider, third-party administrator or employer 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.

3. If an insurer, organization for managed care, health care provider, third-party administrator or employer 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. 29. NAC 616B.103, 616B.130, 616B.141, 616B.144, 616B.147, 616C.027, 616C.1158, 616C.126, 616C.129, 616C.132, 616C.135, 616C.138, 616C.141, 616C.144, 616C.170, 616C.173, 616C.176, 616C.179, 616C.182, 616C.185, 616C.188, 616C. 191, 616C.194, 616C.197, 616C.200, 616C.203, 616C.206, 616C.209, 616C.212, 616C.213, 616C.215, 616C.218, 616C.221, 616C.224, 616C.225, 616C.227, 616C.230, 616C.240,

616C.243, 616C.246, 616C.249, 616C.252, 616C.255, 616C.258, 616D.402, 616D.404, 616D.406, 616D.408, 616D.410, 616D.412, 616D.414, 616D.416, 616D.418, 616D.420, 616D.422, 616D.424, 616D.426, 616D.428, 616D.430, 616D.432, 616D.434, 616D.436, 616D.438, 616D.4381, 616D.4383, 616D.4385, 616D.4387, 616D.4389, 616D.439, 616D.4391, 616D.4393, 616D.4395, 616D.4397, 616D.4399, 616D.440, 616D.443, 616D.444, 616D.445, 616D.446 and 616D.447 are hereby repealed.

Sec. 30. 1. This section and sections 2, 3, 5 to 12, inclusive, 15, 17 to 20, inclusive, and 23 to 28, inclusive, of this regulation become effective upon filing with the secretary of state.

2. Sections 1, 4, 13, 14, 16, 21, 22 and 29 of this regulation become effective on the date on which the administrator of the division of industrial relations of the department of business and industry revises the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

3. The administrator will notify the legislative counsel of the date on which that revision is adopted.