LCB File No. R098-98

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
INDUSTRIAL INSURANCE REGULATION SECTION

In the matter of adoption, amendment and repeal of Regulations pertaining to:

Notification of acceptance or denial of claim, scheduling medical examinations, accident benefits provided by employers, claim forms, uninsured employers, average monthly wage, vocational rehabilitation, and other changes to Chapter 616C of the Nevada Administrative Code.

DIR 98-16
LCB: Unassigned

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NEW effective 7/1/99

1. "Notified" defined. For purposes of compliance with NRS 616C.065, "notified" means an insurer's receipt of a claim for compensation as defined by NRS 616C.020 and NRS 616C.040.

2. Within thirty days after issuing a determination to deny a claim to the injured employee, an insurer shall also notify the administrator or his designated agent by electronically transmitting or mailing a copy of the written determination to deny a claim.

3. To determine whether an insurer has unreasonably delayed or refused payment of compensation to a claimant the administrator will consider:

(a) The reasons given by the insurer for making the payment after the time set forth in subsection 1 of NRS 616C.065 or refusing to make the payment;

(b) The efforts made by the insurer to make the payment within the time set forth in subsection 1 of NRS 616C.065;

(c) The date the payment was made;

(d) Any other circumstance which the administrator deems relevant to determine whether a delay in the payment of compensation due was unreasonable.

NEW, effective 7/1/99
For purposes of compliance with NRS 616C.140,

1. "Employer" means the employer of the injured employee against which the industrial injury or occupational disease claim has been filed or which has been determined by the insurer or decided by the hearing officer, appeals officer or court of competent jurisdiction to be the employer.

2. "Medical examination" means a medical examination relative to the industrial injury or occupational disease of the injured employee and does not include a medical examination for purposes of NRS 616C.490.

3. *An insurer or employer may request that any injured employee, who has filed a claim for compensation, submit himself for a medical examination pursuant to NRS 616C.140 if the insurer or employer requesting the medical examination notifies the employee in writing by no less than 10 days prior to the medical examination.*

4. *An insurer or employer may request that an injured employee who has filed a claim for compensation and lives in a state other than the state where the medical examination is to be conducted submit himself for medical examination pursuant to NRS 616C.140, if the requestor notifies the employee in writing no less than 15 days prior to the medical examination.*

5. *The employer shall provide a copy of the written notification of the medical examination to the insurer at the same time as written notification is provided the injured employee.*

6. *The insurer shall provide a copy of the written notification of the medical examination to the employer at the same time as written notification is provided the injured employee.*

7. *The person requesting a medical evaluation pursuant to NRS 616C.140, shall provide a copy of the medical report to the injured employee and the employer or insurer within 10 days from receipt of the report.*

8. The person requesting the medical evaluation pursuant to subsection 1 of NRS 616C.140 shall:

(a) Pay charges pursuant to NRS 616C.135[1] or if the medical examination is performed outside Nevada, the usual and customary charge of the examiner unless another charge has been agreed upon by the employer and the examiner; and,

(b) Provide the injured employee travel costs; the payment shall be included with the letter notifying the employee of the scheduled appointment.

(1) The person requesting the medical examination shall pay an injured employee for the cost of transportation if he is required to travel 20 miles or more, one way, from:

(I) His residence to the place where he receives the medical examination; or

(II) His place of employment to the place where he receives the medical examination if the medical examination is required during his normal working hours.

(2) Except as otherwise provided in subsection 4, payment for the cost of transportation must be computed at a rate equal to:

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

(II) The expense actually incurred by the injured employee for transportation, if he consents to payment at this rate and the expense is not greater than the amount to which he would otherwise be entitled pursuant to

[1] Fee schedule.

subparagraph (I).

(3) Except as otherwise provided in subsection 4, if an injured employee must travel before 7:00 a.m. or between 11:30 a.m. and 1:30 p.m. or cannot return to his home or place of employment until after 7:00 p.m., or any combination thereof, payment for meals required to be purchased must be computed at a rate equal to:

(I) That allowed for state employees; or

(II) The expense actually incurred by the injured employee for meals, if he consents to payment at this rate and the expense is not greater than the amount to which he would otherwise be entitled pursuant to subparagraph (I).

(4) The person requesting the medical examination shall pay 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. Payment must be computed at a rate equal to:

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

(II) The expenses actually incurred by the injured employee, whichever is less.

(5) With the prior approval of the party requesting the medical examination, an injured employee may be paid for airfare where the time, distance, convenience, or cost justifies his travel by air.[2]

(6) If person moves outside this state or to a new location within this state for his own convenience after filing a claim for compensation, the maximum mileage for one direction for which he may be paid is the mileage allowable before the move or 40 miles, whichever is greater.[3]

(7) No payment will be allowed for a person traveling with an injured employee unless there is a medical necessity that precludes the injured employee from traveling alone. The medical necessity must be substantiated in writing by the injured employee's treating physician or chiropractor.[4]

NEW effective 7/1/99

1. If an insurer receives a claim for compensation from an injured employee and determines the employer named on the claim for compensation is not a covered employer of the insurer, the insurer shall deliver or electronically transmit the claim for compensation to the administrator within one working day after establishing the named employer is not its insured,

and shall so notify the named employer, injured employee and the provider of the health services.

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[2] Similar to NAC 616C.153.

[3] Similar to NAC 616C.156(2)

[4] Similar to NAC 616C.156(3).

2. The administrator or his designated agent shall:

(a) Within ten working days after receipt of notification deliver or electronically transmit a copy of the claim for compensation to the proper insurer and so notify the injured employee, the employer and the provider; and, deliver or electronically transmit a copy of the claim for compensation to the employer, directing the employer to file a report of injury with the employer's insurer; or

(b) If the employer is uninsured, deliver or electronically transmit a copy of the claim for compensation to the system within thirty days after receipt of notification.

3. If the insurer fails to properly notify or untimely notifies the administrator of a named employer is not its insured as required by this regulation, the administrator will:

(a) For the first violation within a twelve-month period, issue a notice of correction pursuant to paragraph (a) of subsection 2 of NRS 616D.120 within a 12 month period.

(b) For the second violation within a twelve-month period, impose an administrative fine of at least $100.

(c) For the third violation within a twelve-month period, impose an administrative fine of at least $250.

(d) For the fourth violation within a twelve-month period, impose an administrative fine of at least $500.

(e) For the fifth and each subsequent violation within a twelve-month period, impose an administrative fine of $1,000.

NEW, effective 7/1/99

If an insurer ceases to provide workers' compensation coverage in this state, it shall notify the administrator 60 days prior to ceasing its operations of the name, address and location of its open and closed claims and the name, address and location of the party assuming responsibility for the open and closed claims.

ACCIDENT BENEFITS PROVIDED BY EMPLOYERS

616C.040 Scope. The provisions of NAC 616C.040 to 616C.055, inclusive, apply to all employers who elect *and have received approval from the administrator* to provide accident benefits for their employees pursuant to NRS 616C.265.

616C.043 Requirements for employer providing benefits. An employer who makes arrangements to provide accident benefits must:

1. Have adequate resources to ensure payment of accident benefits during any period of adverse loss experience;
2. Ensure that each employee is *notified in writing and* guaranteed the right to select his own physician or chiropractor for treatment *pursuant to NRS 616C.090*; and
3. Provide for payment of incurred losses of uninsured sole proprietors and subcontractors pursuant to chapters 616A to 617, inclusive, of NRS.

616C.046 Financial qualifications. Effective 7/1/99

1. Any employer who was not providing accident benefits pursuant to NRS 616C.265 on June 30, 1977, must:

(a) Be a corporation having a net worth of at least $2,500,000; or

(b) Be an entity of the state or its political subdivisions with an annual operating budget in excess of $5,000,000,

and must have paid [workmen's[5]] *workers'* compensation premiums to the system or *private carrier* of not less than $50,000 per year for each of the preceding 2 years to [obtain] *seek* approval of arrangements to provide accident benefits.

2. Every corporate employer who elects *and is approved* to provide accident benefits for his employees shall file with the [chief] *administrator* an annual, audited financial report of the corporation and such other financial information as may be required to establish the financial responsibility necessary to provide accident benefits.

616C.049 Insolvency reserve account. Effective 7/1/99

1. The [manager] *administrator* shall establish [in the state insurance fund], a contingency reserve account against the insolvency of employers who have made arrangements to provide accident benefits. This contingency reserve account is called the insolvency reserve account.

2. The insolvency reserve account must be funded by a surcharge on the ex medical premium rates *received by the system and private carriers*. The surcharge must not exceed 10 percent of the rates in the manual.

3. No surcharge may be added to ex medical rates in the manual when the balance in the insolvency reserve account exceeds $[500,000] *2,500,000.*

[4. The insolvency reserve account will be credited annually with the current average book yield on the system's invested assets as determined at the close of the fiscal year. Interest must be credited on the average reserve account balance.]

616C.052 Contents of employer's arrangement.

An employer's arrangement to provide accident benefits must include:

1. Written instructions to his employees specifying procedures to be followed for the payment of accident benefits to injured employees or employees with occupational diseases *and written notification informing the employee that he is not required to accept the services of a physician or chiropractor provided by the employer but may seek professional medical services of his choice as provided in NRS 616C.090.*

2. A written explanation or a copy of instructions covering the procedures to be followed in determining the amount of fees charged by providers of medical care to be reimbursed by the employer;

3. Identification of the offices or locations in Nevada which are responsible for the administration and payment of accident benefits;

4. A copy of any contract between the employer and any provider of medical or hospital services; and

5. A written statement in which the employer, as a condition precedent, agrees to

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[5] It is the intention of DIR to change "workmen's compensation" to "w*orkers' compensation"* in this Chapter. If there are other instances of the regulations' using "workman" or "workmen," please change to "wor*kers."*

assume liability for the costs of transporting an injured employee to the nearest place of proper treatment and for the costs of administering first aid to the employee while he is being transported.

616C.055 Reports required.

1. Each employer who elects to provide accident benefits pursuant to NRS 616C.265 shall submit the following reports for all injuries:

(a) An employer's report of an industrial injury, on a form approved by the [chief] *administrator*. This report is due within 6 working days after the date of notice of the injury or the occupational disease.

(b) An employee's claim for compensation and a physician's or chiropractor's report of initial treatment, on a form approved by the [chief] *administrator*. This report is due within 5 days after initial treatment.

(c) Upon request, copies of all bills from providers of medical care itemizing the services rendered.

2. The following reports must be submitted upon request:

(a) A copy of the physician's operative report covering surgery performed.

(b) Copies of all reports of medical consultation requested by the treating physician, chiropractor, or employer.

(c) A copy of the hospital's report of the employee's discharge.

3. The following reports are required on a scheduled basis:

(a) A monthly report prepared by the treating physician or chiropractor during the period of disability. The report must contain a narrative summary of the claimant's condition, his progress, and the physician's or chiropractor's plan of future treatment and prognosis. The report is due on or before the 10th day of each month following the month in which the treatment or evaluation is rendered.

(b) Annually, on July 1, a copy of the current document which advises the employee of his rights to accident benefits as a result of industrial injury or occupational disease and the procedures which he is to follow to obtain those accident benefits.

4. The employer shall submit all reports required by this section to the [chief and the system] *the administrator and its insurer.*

5. All determinations regarding compensation must be made by the insurer.

DETERMINATION AND PAYMENT OF BENEFITS
Claims for Compensation

616C.073 Claims: Forms; Filing.

1. A claim *for compensation* must be printed or typed, properly titled, [and] signed *and dated* by the person filing the claim or his attorney or other representative. *A claim which is electronically transmitted must contain a symbol which is unique to the person who is signing it and which will invalidate the symbol if the data is altered.*

2. A [claim] *report of injury* must be submitted on a form *prescribed by the administrator and* provided by the insurer and must state the name and address of the injured employee and the time, place, nature[,] and cause of his injury. *If the employer electronically*

transmits the report of injury to the insurer, he shall retain the original report for three years[6] *unless pursuant to NRS 616C.045 the insurer or third-party administrator requests it be mailed the report of injury which contains the original signature*.

3. The original of each claim *for compensation which is electronically transmitted* must be [filed with the insurer] *retained by the treating physician or chiropractor for three years*[7] *unless pursuant to NRS 616C.040, the insurer or third-party administrator requests it be mailed the claim for compensation which contains the original signature*.

4. If the injury or occupational disease will result in the [claimant] *injured employee* losing time form work and the [claimant] *injured employee* has been reporting his income from tips, the employer shall submit the amount of tips declared on Form D-23, which must be included in calculating the average monthly wage of the [claimant] *injured employee* pursuant to NRS 616B.227.

Repeal NAC 616C.106[8]

~~**616C.106 Comprehensive integrated workup or independent medical evaluation: Authorization; conditions.**~~

~~1. An insurer may authorize a comprehensive integrated workup or an independent medical evaluation of a claimant to be conducted outside this state if:~~

~~(a) Any of the following conditions are met:~~

~~(1) The claimant lives in the state where the workup or evaluation is to be conducted;~~

~~(2) Persons who are engaged in practicing the medical specialty or specialties required for the workup or evaluation do not practice in this state; or~~

~~(3) Persons with the medical expertise required for the workup or evaluation do not practice in this state; and~~

~~(b) All of the following conditions are met:~~

~~(1) A written request for the workup or evaluation is submitted to the insurer by the claimant, his treating physician or chiropractor, or his employer;~~

~~(2) The medical adviser of the insurer expresses to the insurer in writing his agreement that the request is appropriate; and~~

~~(3) A physician or chiropractor, upon written request by the insurer, expresses to the insurer in writing his agreement that the request is appropriate. The physician or chiropractor to whom such a request is made must be licensed to practice in this state and must practice in the specialty most directly related to the injury of the claimant. The written agreement required by this subparagraph shall be deemed to have been given if the physician or chiropractor fails to respond in writing to the request of the insurer within 10~~

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[6] NAC 616A.480(1)(e) is also be amended and contains the 3 year requirement.

[7] NAC 616A.480(1)(e) is also be amended and contains the 3 year requirement.

[8] This regulation is similar to NRS 616.3345 (treatment outside state) which was added to NRS in 1991 and repealed in 1995.

~~days after the request is mailed or delivered to him.~~

~~2. As used in this section, "comprehensive integrated workup" means the evaluation of a claimant by a team of medical specialists consisting of at least a physiatrist, neurologist, psychiatrist, an orthopedic surgeon, and a neurological surgeon, followed by the preparation of a report of the evaluation which must be concurred in by all the members of the team.~~

UNINSURED EMPLOYERS

616C.390 Notification that employer uninsured; notification that notice of termination rescinded.

1. *By the end of the next working day* after receiving information that an employer has failed to obtain or maintain coverage required by chapters 616A to 617, inclusive, of NRS, the system shall notify the [chief] *administrator* and furnish copies of documents indicating the name [and location]*, d.b.a., business address(es), physical address(es), telephone number(s), and if applicable, employer's risk classifications, employer coverage history, estimated annual premiums and date of account cancellation* of the uninsured employer.

2. If the system rescinds a notice of termination *with a reopening or reinstatement*, the system shall notify the [industrial insurance regulation section] *administrator* in writing [immediately] by [telephone] *facsimile or by electronic transmission at the end of the following working day*. [Written confirmation must be submitted within 3 days.] *Written notification of the reopening or reinstatement must include the policy name, policy number, business address(es), date of cancellation, date of reopening or reinstatement, total annual premiums, and, any other charges assessed.*

3. If a policy is canceled for a reason other than non-payment of premium, the system will notify the administrator of the cancellation and the reason for the cancellation within 3 working days after the insurer becomes aware of the reason for the cancellation.

616C.390 Notification that employer uninsured; notification that notice of termination rescinded. Effective 7/1/99

1. *By the end of the next working day* after receiving information that an employer has failed to obtain or maintain coverage required by chapters 616A to 617, inclusive, of NRS, the system *or the private carrier* shall notify the [chief] *administrator* and furnish copies of documents indicating the name [and location]*, d.b.a., business address(es), physical address(es), telephone number(s), and if applicable, employer's risk classifications, employer coverage history, estimated annual premiums and date of account cancellation* of the uninsured employer.

2. If the system *or the private carrier* rescinds a notice of termination *with a reopening or reinstatement*, the system *or the private carrier* shall notify the [industrial insurance regulation section] *administrator* in writing [immediately] by [telephone] *facsimile or by electronic transmission within 24 hours or at the end of the following working day*. [Written confirmation must be submitted within 3 days.] *Written notification of the reopening or reinstatement must include the policy name, policy number, business address(es), date of cancellation, date of reopening or reinstatement, total annual premiums, and, any other charges assessed.*

3. If a policy is canceled for a reason other than non-payment of premium, the system or the private carrier will notify the administrator of the cancellation and the reason for the cancellation within 3 working days after the insurer becomes aware of the reason for the cancellation.

NEW

If the insurer fails to properly notify or untimely notifies the administrator of an uninsured employer or fails to provide or untimely provides the required cancellation, reopening or reinstatement information as required by NAC 616C.390, the administrator will:

1. For the first violation within a twelve-month period, issue a notice of correction pursuant to paragraph (a) of subsection 2 of NRS 616D.120 within a 12 month period.

2. For the second violation within a twelve-month period, impose an administrative fine of at least $100.

3. For the third violation within a twelve-month period, impose an administrative fine of at least $250.

4. For the fourth violation within a twelve-month period, impose an administrative fine of at least $500.

5. For the fifth and each subsequent violation within a twelve-month period, impose an administrative fine of $1,000.

616C.393 Investigation of claim against uninsured employer: Report; information to be sent to [chief] *administrator*.

1. If the system conducts an investigation regarding a claim against an uninsured employer, a report of its findings must be prepared.

2. Upon completion of the investigation, a copy of all available information from the file, including the investigative report, must be sent to the [chief] *administrator*.

616C.393 Investigation of claim against uninsured employer: Report; information to be sent to [chief] *administrator*. Effective 7/1/99.

1. If the system *or private carrier* conducts an investigation regarding a claim against an uninsured employer, a report of its findings must be prepared.

2. Upon completion of the investigation, a copy of all available information from the file, including the investigative report, must be sent to the [chief] *administrator*.

616C.396 Investigation of claims; conditions for refusal to assign claims; notification of right of appeal. Effective 7/1/99

1. The industrial insurance regulation section will investigate each claim against an uninsured employer to determine whether the claim will be assigned to the system for the payment of benefits from the uninsured employers' claim fund. The industrial insurance regulation section will refuse to assign the claim if:

(a) The system *or the private carrier* has failed to exhaust its remedies by failing to charge the claim against any existing policies of the employer of the employee or any principal contractor who is liable for the payment of compensation;

(b) The claim includes a person excluded as an employee pursuant to NRS 616A.110;

(c) The notice of the claim fails to include the documents which support the claim; or

(d) The claim fails to satisfy any provision of NRS 616C.220.

2. If the industrial insurance regulation section refuses to assign a claim, it will include in the notice required by NRS 616C.220 a statement of the right of appeal provided by that section.

616C.399 Billing of claims assigned to system; reimbursement of uninsured employer's fund.

1. If a claim against an uninsured employer is assigned by the [chief] *administrator* to the system, the system shall bill the division for compensation paid on the claim; > *billings must be submitted to the division within 90 days after the date on which the compensation was paid unless good cause is shown for a later billing. If good cause is shown, no billing for compensation paid may be submitted later than 6 months after the date on which the compensation was paid.*[9] The system shall present with any billing copies of invoices, benefit checks, change orders, journal entries, and employer's claims expense reports to evidence each transaction or payment made on the claim. The division shall promptly reimburse the system for only those billings supported by such evidence.

2. The system shall [promptly] reimburse the uninsured employer's fund *within 30 days from receipt* [for] *of* any repayments or reimbursements received by the system.

616C.402 Notice that *uninsured* claim closed or reopened.

1. If a claim against an uninsured employer is closed, the system shall send *or electronically transmit* a copy of the closure notice to the division *at the same time such notice is delivered to the injured worker or closed pursuant to NRS 616C.235.*

2. If a claim against an uninsured employer is reopened, the system shall send *or electronically transmit* a copy of the reopening notice to the division [within 5 days after the date of the notice] *at the same time such notice is delivered to the injured worker and employer.*

3. If the system fails to comply or complies in an untimely manner with any provision of this regulation that requires the system to provide a notice, to the administrator or his designated agent, the administrator will:

(a) For the first violation within a 12-month period, issue a notice of correction pursuant to paragraph (a) of subsection 2 of NRS 616D.120.

(b) For the second violation within a 12-month period, issue an administrative fine of at least $100.

(c) For the third violation within a 12-month period, issue an administrative fine of at least $250.

(d) For the fourth violation within a 12-month period, impose an administrative fine of at least $500.

(e) For the fifth or each subsequent violation within a 12-month period, impose an administrative fine of $1,000.

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[9] Language is similar to NAC 616C.144(1).

616C.405 Investigation and administration of claim by employee of uninsured employer.

The [chief] *administrator* will:

1. Direct an immediate investigation of each claim of an employee of an uninsured employer which is received.

2. Notify the [claimant] *injured employee and the employer* in writing within 30 days of receipt of his claim of the [decision] *determination* of the [chief] *administrator* on the claim.

3. Deliver copies of accepted claims and the [claimant's] *injured employee's* assignment of rights of action to the employer.

4. Advise the employer that he will be billed monthly for all expenses incurred in the settlement of accepted claims.

5. Take any action necessary to collect from the uninsured employer the cost incurred in the settlement of accepted claims.

616C.423 Items included in average monthly wage.

1. Money, goods and services which are paid within the period used to calculate the average monthly wage include, but are not limited to:

(a) Wages;

(b) Commissions which are prorated [over 6 months] *over the period used to calculate average monthly wage*;

(c) Incentive pay;

(d) Payment for sick leave;

(e) Bonuses which are prorated [over 1 year] *over the period used to calculate average monthly wage*;

(f) [Payment at t] *T*ermination *pay*;

(g) Tips which are collected and disbursed by the employer which are not paid at the discretion of the customer;

(h) Tips reported by the employee pursuant to NRS 616B.227;

(i) Allowance for tools or for the rental of hand and power tools not normally provided by the employee;

(j) Salary;

(k) Payment for piecework;

(l) Payment for vacation;

(m) Payment for holidays;

(n) Payment for overtime;

(o) Payment for travel when it is paid to compensate the employee for the time spent in travel; and

(p) The reasonable market value of either board or room, or both. At least $150 per month will be allowed for board and room, $5 per day or $1.50 per meal for board, and $50 per month for a room.

2. Notwithstanding paragraph (p) of subsection 1, the reasonable value of a meal furnished by an employer to an employee is the value, if any, specified in the collective bargaining agreement between the employee and employer.

3. The following payments may not be included in the calculation of an average

monthly wage:

(a) Reimbursement to the employee for expenses to enable him to perform his job, including a per diem allowance and reimbursement for travel expenses;

(b) Payment for employment which is not subject to coverage under chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(c) Payment for employment for which coverage is elective, but has not been elected; and

(d) Allowances for laundry or uniforms.

616C.435 Period used to calculate average monthly wage.

1. Except as otherwise provided in this section, a history of earnings for a period of 12 weeks must be used to calculate an average monthly wage.

2. If a 12-week period of earnings is not representative of the [claimant's] *injured employee's* average monthly wage, earnings over a period of 1 year or the full period of employment, if it is less than 1 year, may be used. Earnings over 1 year or the full period of employment, if it is less than 1 year, must be used if the average monthly wage would be increased.

3. If an employee is a member of a labor organization and is regularly employed by referrals from the office of that organization, wages earned from all employers for a period of 1 year may be used. A period of 1 year using all the employee's wages from all his employers must be used if the average monthly wage would be increased.

4. If information concerning payroll is not available for a period of 12 weeks, wages may be averaged for the available period, but not for a period of less than 4 weeks.

5. If information concerning payroll is unavailable for a period of at least 4 weeks, average earnings must be projected using the rate of pay on the date of the accident or illness and the employee's projected working schedule.

6. If earnings are based on piecework and a history of earnings is unavailable for a period of at least 4 weeks, the wage must be determined as being equal to the average earnings of other employees doing the same work.

7. If these methods of determining a period of earnings cannot be applied reasonably and fairly, an average monthly wage must be calculated by the insurer at 100 percent of:

(a) The sum which reasonably represents the average monthly wage of the employee as defined in NAC 616C.420 to 616C.447, inclusive, at the time his injury or illness occurs; or

(b) The hourly wage on the day the injury or illness occurs, calculated by using the projected working schedule.

8. The period used to calculate the average monthly wage must consist of consecutive days, ending on the date on which the accident or disease occurred, or the last day of the payroll period preceding the accident or disease if this period is representative of the average monthly wage.

9. As used in this section, "earnings" means earnings received from the employment in which the injury occurs and in any concurrent employment.

616C.438 Calculation of days in period of earnings.

Each day within a period of earnings must be counted to determine the period of

employment, except for days on which an employee was:

1. Absent because of a certified illness or disability, including time for which temporary disability payments were made;
2. Institutionalized in a hospital or other institution;
3. Enrolled as a full-time student and not employed on the days of attendance of school;
4. In military service other than training duty conducted on weekends; [or]
5. Absent because of an officially sanctioned strike[.] *; or*
6. *Absent due leave approved pursuant to the American Family Leave Act.*

All other days in the period, including days while on vacation, will be used to calculate the average monthly wage.

616C.441 Rate of pay. NO CHANGES BUT POSSIBLE AMENDMENT AFTER TESTIMONY[10]

The rate of pay on the date of the accident or the onset of the disease will be used to calculate the average monthly wage.

616C.444 Change in job. NO CHANGES BUT POSSIBLE AMENDMENT AFTER TESTIMONY

The average monthly wage of an employee who permanently or temporarily changes to a job with different duties, rate of pay, or hours of employment, must be calculated using only information concerning payroll which relates to his primary job at the time of the accident. The preceding sections apply in calculating the average monthly wage for such an employee.

616C.447 Concurrent employment. Effective 7/1/99

The average monthly wage of an employee who is employed by two or more employers covered by the system, *a private carrier,* or by a plan of self-insurance on the date of a disabling accident or disease is equal to the sum of the wages earned or deemed to have been earned at each place of employment. The insurer shall advise [a claimant] *injured employee* in writing of his entitlement to compensation for concurrent employment at the time of the initial payment of his compensation.

616C.571 Reimbursement for costs of transportation.[11]

1. Except as otherwise provided in this section, if an injured employee is required to travel more than 40 miles per day to participate in a program of vocational rehabilitation, an

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[10] Although DIR is not proposing any amendments of NAC 616C.441 and NAC 616C.444, these regulations are interrelated with the other average monthly wage regulations so DIR would like to have the language printed so that readers are able to review the entire average monthly wage regulation section to see if these regulations are consistent with the ones being proposed for change.

[11] Possible that comments will be to repeal the entire section rather than amend it.

insurer shall reimburse the injured employee for the costs of transportation:

(a) For not more than 200 miles per week; and

(b) Computed at a rate not to exceed the mileage allowance for state employees who use their personal vehicles for the convenience of the state.

2. For the entire period of a program of vocational rehabilitation, an insurer shall not reimburse an injured employee more than $1,600 for the costs of transportation, including:

(a) Not more than $600 for costs incurred by the employee during the development of the program; and

(b) Not more than $1,000 for costs incurred during the period in which the employee participates in the program.

[3. If an insurer requires an injured employee to attend the Jean Hanna Clark Rehabilitation Center as part of a program of vocational rehabilitation and the employee must travel more than 50 miles round trip, the insurer shall not include the cost of reimbursing such mileage in determining the maximum amounts for reimbursement set forth in this section.]

616C.580 Consultation with system *or the private carrier*; general requirements for offers of employment. Effective 7/1/99[12]

1. When a consultation is held by the system *or the private carrier* with an injured employee and the treating physician or chiropractor with respect to whether a proposed program of vocational rehabilitation is compatible with the injured employee's physical limitations, and the employer is present, the system or *the private carrier* shall explain to the employer:

(a) Any incentives which are available to him if he participates in the vocational rehabilitation of the injured employee;

(b) The estimated cost of the proposed program of vocational rehabilitation; and

(c) That the cost of the program of vocational rehabilitation will be included in the calculation of his experience rating.

2. The system *or the private carrier* shall send a written summary of the consultation to the employer, whether or not he was present during the consultation.

3. Except as otherwise provided in subsection 5, within 30 days after such a consultation, the employer shall give the system a written notice stating whether or not he will offer the injured employee employment which is consistent with the injured employee's physical limitations. If the employer intends to make an offer of employment, the employer must make the offer to the injured employee in writing within 10 days after notifying the system of his intent to offer employment. If the offer of employment does not meet the requirements set forth in NAC 616C.583, the employer must conform the offer to those requirements within an additional 10 days.

4. If the employer fails to offer employment that is compatible with the physical limitations of the injured employee or fails to meet any of the requirements imposed pursuant to subsection 3, the employer waives any right to object to the provision of any future vocational rehabilitation services to the injured employee.

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[12] Possible repeal of the entire section rather than amendment.

5. If the offer of employment requires an evaluation of the feasibility of structural modifications to the employer's place of business, the employer may have an additional 30 days to make an offer of employment to the injured employee.

6. If subsequent medical evidence demonstrates that the injured employee is unable to perform the work contained in the offer of employment made pursuant to subsection 3, and written notice of the opinion of the physician or chiropractor to this effect is given to the employer, the employer may make another offer of employment within 30 days after his receipt of the notice. If the employer fails to make another offer of employment pursuant to this subsection, the employer waives any right to object to the provision of future vocational rehabilitation services to the injured employee.

7. Except as otherwise provided in this subsection, if the employer makes an offer of employment, the injured employee must commence the employment within 30 days after the offer has been made. The system *or the private carrier* may extend the date on which the injured employee must commence the employment:

(a) For an additional 30 days if structural modifications to the employer's place of business are required; or

(b) For good cause shown.

The injured employee remains eligible for vocational rehabilitation maintenance until he commences the employment.

8. The system *or the private carrier* shall submit a description of the proposed employment for the injured employee to the employee's treating physician or chiropractor. Within 10 days after receiving the description, the treating physician or chiropractor shall determine if the employment is compatible with the physical limitations of the injured employee and inform the system *or the private carrier* of the determination. If the treating physician or chiropractor fails to inform the system *or the private carrier* of the determination within 10 days, the system's *or the private carrier's* medical advisor or consulting physician shall make the determination.

616C.598 Compensation for temporary partial disability.

1. If the wage a claimant receives upon reemployment is less than the compensation for a temporary total disability to which he is entitled, compensation for a temporary partial disability must be used to make up the difference.

2. To calculate compensation for a temporary partial disability, the wage earned upon reemployment:

(a) Must be based on the net wage; or

(b) Is that earned, on average:

(1) On each of 7 days in succession, if the calculation is for a weekly rate;

(2) On each of 14 days in succession, if the calculation is for a biweekly rate; or

(3) On each day of the claimant's pay period, if the calculation is for a semimonthly rate,

whichever is greater.

3. Compensation for a temporary partial disability is not available for any programs of vocational rehabilitation for self-employment.

4. An employee who is capable of working, but rejects employment at a wage which

exceeds compensation for a temporary total disability, and who accepts a job at a lesser wage, is not entitled to receive compensation for a temporary partial disability.

5. A claimant who is capable of full-time employment in an occupation paying a wage which would exceed compensation for a temporary total disability, but who is unable to find such employment, is not entitled to receive compensation for a temporary partial disability.

6. Before compensation for a temporary partial disability may be granted, there must be a reasonable indication that the rate of compensation may be met within 2 years.

7. As used in this section, "net wage" means that amount paid to the claimant after the usual deductions are made for social security, income taxes, and other required state or federal deductions.

8. Calculation of temporary partial disability shall be performed on Form D45.

9. Temporary Partial Disability shall be paid within fourteen days after receipt of wage information from the injured employee.

616C.601 Suspension or termination of vocational rehabilitation benefits: Grounds; report by system; notice; appeal.

1. An injured employee who:

(a) Rejects a suitable program of vocational rehabilitation which is offered to him;

(b) Rejects employment which is within the limitations prescribed by a treating physician or chiropractor; or

(c) Refuses to cooperate with the insurer in the development of a program of vocational rehabilitation or a search for a job,

is subject to a suspension or termination of his vocational rehabilitation benefits.

2. An injured employee who has agreed to participate in a suitable program of vocational rehabilitation but who:

(a) Fails to report for scheduled activities, a search for a job, training, or employment;

(b) Reports but refuses to cooperate with the insurer;

(c) Reports but is impaired by alcohol or drugs not prescribed by a physician;

(d) Has an unexcused absence of 3 or more consecutive days; or

(e) Has unexcused absences that prevent him from:

(1) Completing the training in the period specified in the agreement for the program; or

(2) Developing skills for employment,

is subject to a suspension or termination of his vocational rehabilitation benefits.

3. An insurer may terminate vocational rehabilitation benefits if the injured employee has misrepresented or concealed a matter which was material to the evaluation of his eligibility or the provision of vocational rehabilitation services.

4. If the insurer is the system, it shall report to the employer each injured employee who rejects or fails to participate in a program of vocational rehabilitation. The report must contain a brief description of the facts and a statement of the system's [decision] *determination* to suspend or terminate benefits at a specified future date.

5. Vocational rehabilitation benefits terminate on the date specified in the system's report.

6. An insurer shall give the injured employee a written notice that his vocational rehabilitation benefits have been suspended or terminated and a statement of the reason for the

suspension or termination.

7. An injured employee whose vocational rehabilitation benefits have been suspended or terminated is entitled to a hearing on the suspension or termination and may appeal from any decision of a hearing officer on that matter.

616C.601 Suspension or termination of vocational rehabilitation benefits: Grounds; report by [system] *insurer*; notice; appeal. Effective 7/1/99

1. An injured employee who:

(a) Rejects a suitable program of vocational rehabilitation which is offered to him;

(b) Rejects employment which is within the limitations prescribed by a treating physician or chiropractor; or

(c) Refuses to cooperate with the insurer in the development of a program of vocational rehabilitation or a search for a job,

is subject to a suspension or termination of his vocational rehabilitation benefits.

2. An injured employee who has agreed to participate in a suitable program of vocational rehabilitation but who:

(a) Fails to report for scheduled activities, a search for a job, training, or employment;

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(e) Has unexcused absences that prevent him from:

(1) Completing the training in the period specified in the agreement for the program; or

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is subject to a suspension or termination of his vocational rehabilitation benefits.

3. An insurer may terminate vocational rehabilitation benefits if the injured employee has misrepresented or concealed a matter which was material to the evaluation of his eligibility or the provision of vocational rehabilitation services.

4. If the insurer is the system *or a private carrier*, it shall report to the employer each injured employee who rejects or fails to participate in a program of vocational rehabilitation. The report must contain a brief description of the facts and a statement of the system's *or the private carrier's* [decision] *determination* to suspend or terminate benefits at a specified future date.

5. Vocational rehabilitation benefits terminate on the date specified in the system's *or a private carrier's* report.

6. An insurer shall give the injured employee a written notice that his vocational rehabilitation benefits have been suspended or terminated and a statement of the reason for the suspension or termination.

7. An injured employee whose vocational rehabilitation benefits have been suspended or terminated is entitled to a hearing on the suspension or termination and may appeal from any decision of a hearing officer on that matter.

616C.613 Reports of employee exposure and claims. NO CHANGES BUT POSSIBLE AMENDMENT AFTER TESTIMONY

1. Reports relating to employees' exposure and losses from claims are due by April 1

and must cover employment and loss experience during the preceding calendar year.

2. The administrator will provide employers with the proper forms and instructions for their completion at least 60 days before the date on which they are due.