

LCB File No. R060-03

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

**NOTICE OF WORKSHOP TO CONSIDER REGULATIONS
AND
NOTICE OF INTENT TO ACT ON PROPOSED REGULATIONS
(NOTICE OF PUBLIC HEARING)**

The Division of Industrial Relations, Department of Business and Industry, State of Nevada (Division), will conduct a public workshop followed by a public hearing on proposed regulations concerning the adoption of the 5th Edition of the American Medical Association's *Guide to the Evaluation of Permanent Impairment* (5th Edition, AMA Guide) pursuant to Chapters 616A to 617, inclusive, of Nevada Revised Statutes. The public workshop and the proposed regulation hearing are necessary to address 2003 legislative changes. At the workshop significant legislative changes will be discussed and/or addressed and changes will be proposed to existing provisions of Chapters 616A to 617, inclusive of the Nevada Administrative Code, including, but not limited to, the followings Assembly Bills: 140, 168, 294, 438, 451; and, Senate Bills 168, 184, 193, 240, 319, and 320. A public hearing on proposed regulations concerning the 5th Edition, AMA Guide, will be held immediately following the public workshop.

The public workshop and a subsequent public hearing on proposed regulations will be conducted, via videoconference, at 9:00 a.m., June 30, 2003, at the following locations:

Bradley Building
2501 East Sahara Avenue
Conference Room 2nd Floor
Las Vegas, Nevada

Department of Business and Industry
788 Fairview Drive
Hearing Room
Carson City, Nevada

Pursuant to NRS 233B.0603, the Division is providing the following information pertaining to the public workshop and the proposed regulations.

The need and purpose of the proposed regulations: The Division is conducting the public workshop to addresses the 2003 legislative changes and a public hearing on proposed regulations concerning the 5th Edition, AMA Guide, and any matters related thereto. One legislative change requires the adoption of the 15th Edition, AMA Guide. Other Legislative changes may require the Division to adopt regulations; regulations may also be needed that clarify, improve, and standardize the Division's oversight of industrial insurance.

The terms and substance of the proposed regulations: In particular, the Division will adopt regulations requiring the use of the 5th Edition, AMA Guides, for permanent partial disability (PPD) ratings beginning October 1, 2003, and other matters related thereto.

The estimated economic effect of the proposed regulations on (a) regulated businesses and (b) the public, including, stated separately, (i) adverse and beneficial effects, and (ii) immediate and long-term effects: The Division believes that the immediate adverse economic effect of the proposed regulations is minimal due, in part, to conflicting information concerning the "overall" premium impact of the adopting of the 5th Edition, AMA Guides. There will, however, be cost associated with training rating physicians and chiropractors. The Division has received some information that suggests that individual PPD ratings may increase, thus benefiting some injured workers. In the long-term, the Division does not anticipate that the adoption of the 5th Edition, AMA Guides, will have either an adverse or beneficial economic effect; changes necessary to implement or enforce the proposed regulations will not have any adverse or beneficial economic effect, either immediate or long-term.

The estimated cost to the Division for enforcement of the proposed regulations: The Division estimates that the cost of implementation and enforcement is minimal. The Division already enforces substantially similar regulations. The legislative changes and the regulations necessary to implement and enforce them do not appear to place a significant economic burden on the Division.

The Division believes that the proposed regulations do not overlap or duplicate any existing regulations.

The proposed regulations are not required by federal law; they are, however, more stringent than federal law; there is no equivalent federal law.

The Division invites representatives of regulated businesses and the public to attend the public hearing and/or prepare written and/or oral comments concerning the proposed regulations. Interested persons may submit written comments to John F. Wiles, Division Counsel, Division of Industrial Relations, 1301 North Green Valley Parkway, Suite 200, Henderson, Nevada 89074. If no person who is directly affected by the proposed regulations appears to make oral comments, the Division will proceed immediately to act upon any written submissions.

Persons with disabilities who require special accommodations or assistance at the public hearing are requested to notify Denise Starr, in writing, at least three (3) working days prior to the hearing, at the Division's office at 1301 North Green Valley Parkway, Suite 200, Henderson, Nevada 89074.

A copy of the proposed regulations is available at the Division's web page (www.dirweb.state.nv.us) the Division's offices (400 West King, Suite 210, Carson City, Nevada; 1301 North Green Valley Parkway, Suite 200, Henderson, Nevada; 4600 Kietzke Lane, Suite F-153, Reno, Nevada; 350 W. Silver Street, Suite 230, Elko, Nevada; 610 Melarkey, Winnemucca, Nevada; and State House Complex, 1100 Erie Main, Suite #3, Tonopah, Nevada) and at the main branch of the public library of each county.

Notice required by NRS 233B.064: Upon adoption of any regulation, the agency (the Division), if requested to do so by an interested person, either before adoption or thirty days thereafter, shall

issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been posted at the Division's offices, the main branch of the public library in each county, the Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada and the Nevada State Library and Archives, 100 Stewart Street, Carson City, Nevada.

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Explanation - Matter in *italics* and **bold** is new; matter in bracket ~~omitted material~~ is material to be omitted.

AUTHORITY: NRS 616C.110; Assembly Bill 168

Section 1. Amend NAC 616C.002 as follows: NAC 616C.002 Adoption by reference of American Medical Association's *Guides to the Evaluation of Permanent Impairment*.

1. For the purposes of **NRS 616B.557, 616B.578, 616B.587, 616C.105, 616C.490 and 617.459**, the division hereby adopts by reference the *Guides to the Evaluation of Permanent Impairment*, **5** ~~[4]~~^[4]th Edition, ~~[3rd Printing,]~~ published by the American Medical Association.

2. A copy of the publication may be obtained from the American Medical Association, P.O. Box **903076, Atlanta, Georgia, 31193-0876** ~~[7046, Dover, Delaware 19903-7046]~~, (800) 621-8335, for the price of **\$129.00** ~~[49.95]~~ for persons who are members of the association, or **\$149.00** ~~[75.95]~~ for persons who are not members of the association.

3. The provisions of this section do not:

(a) Constitute a change of circumstances for the purposes of **NRS 616C.390**.

(b) Entitle an injured employee whose permanent partial disability was rated pursuant to **NRS 616C.490** before May 1, 1997, to an increase in the compensation he receives for that disability.

Section 2. Amend NAC 616C.021 as follows: NAC 616C.021 Rating physician or chiropractor: Designation; qualifications; authority; review of rating evaluation.)

1. The designation of a rating physician or chiropractor pursuant to **NRS 616C.490** must be in writing. To qualify for designation, a physician or chiropractor must:

(a) Possess the qualifications required of a physician or chiropractor who is appointed to the panel of physicians and chiropractors established pursuant to **NRS 616C.090** and **NAC 616C.003**;

(b) Demonstrate a special competence and interest in industrial health by:

(1) Performing ratings evaluations of permanent partial disabilities when selected pursuant to **NRS 616C.490**, except disabilities related to an injured employee's vision or functional limitations, including deficiencies in brain function, resulting from an industrial accident or occupational disease;

(2) Scheduling and performing a rating evaluation within 30 days after receipt of a request from an insurer, a third-party administrator or an injured employee or his representative; and

(3) Serving without compensation for a period not to exceed 1 year on the panel to review ratings evaluations established pursuant to **NAC 616C.023**;

(c) Except as otherwise provided in subsection 2, successfully complete a course on rating disabilities that is approved by the administrator and pass an examination that is administered by

the American Board of Independent Medical Examiners, ~~or~~ its successor organization, *another organization or company recognized by the division, and course on the most recent edition of American Medical Association's Guides to the Evaluation of Permanent Impairment adopted by reference by the division pursuant to NRS 616C.110 and NAC 616C.002*; and

(d) Demonstrate an understanding of the:

(1) Regulations of the division related to the evaluation of permanent partial disabilities; and

(2) American Medical Association's *Guides to the Evaluation of Permanent Impairment*, as adopted by reference by the division pursuant to [NRS 616C.110](#) and [NAC 616C.002](#).

2. The administrator may authorize ophthalmologists and psychiatrists who are authorized to practice in this state to attend the relevant portions of the course required by paragraph (c) of subsection 1 and, upon the recommendation of the instructor of the course, may approve an ophthalmologist or psychiatrist to evaluate injured employees with impaired vision or brain damage according to his area of specialization.

3. A rating evaluation of a permanent partial disability may be performed by a chiropractor only if the injured employee's injury and treatment is related to his neuromusculoskeletal system.

4. A rating physician or chiropractor may not rate the disability of an injured employee if the physician or chiropractor has:

(a) Previously examined or treated the injured employee for the injury related to his claim for workers' compensation; or

(b) Reviewed the health care records of the injured employee and has made recommendations regarding the likelihood of the injured employee's ratable impairment.

5. A rating evaluation of a permanent partial disability performed by a rating physician or chiropractor is subject to review by the administrator pursuant to the provisions of [NAC 616C.023](#).

Section 3. Delete NAC 616C.476 in its entirety: NAC 616C.476 Rating physician or chiropractor: Performance and documentation of certain ratings.

~~[1. A rating physician or chiropractor who performs an evaluation of a permanent partial disability shall evaluate the industrial injury or occupational disease of the injured employee as it exists at the time of the rating evaluation. The rating physician or chiropractor shall take into account any improvement or worsening of the industrial injury or occupational disease that has resulted from treatment of the industrial injury or occupational disease.~~

~~— 2. A rating physician or chiropractor performing an evaluation of a permanent partial disability that is related to the spine of an injured employee shall use the "Injury Model," as described on page 3/94 of the guide, to rate the disability if the condition of the injured employee is listed in Table 70, Spine Impairment Categories for Cervicothoracic, Thoracolumbar, and Lumbosacral Regions, on page 3/108 of the guide. If none of the categories set forth in the table are applicable to the condition of the injured employee, the rating physician or chiropractor may use the "Range of Motion Model," as described on page 3/94 of the guide, to assist in categorizing the disability.~~

~~— 3. A rating physician or chiropractor evaluating an upper extremity neurological impairment shall use Table 15, Maximum Upper Extremity Impairments Due to Unilateral Sensory or Motor Deficits or Combined Deficits of the Major Peripheral Nerves, on page 3/54 of the guide, rather than Table 16, Upper Extremity Impairment Due to Entrapment Neuropathy, on page 3/57 of the guide.]~~