

LCB File No. T011-03

**PROPOSED TEMPORARY REGULATION OF THE DIVISION
OF INSURANCE OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON
PROPOSED REGULATION**

The Department of Business and Industry, Division of Insurance (Division) is proposing a new temporary regulation pertaining to the Workers' Compensation Appeals Panel. A workshop has been set for 1:00 p.m., on March 13, 2003, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested parties may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the workshop is to solicit comments from interested persons on the proposed temporary regulation concerning the Rules of Practice and Procedure for the Workers' Compensation Appeals Panel.

Members of the insurance industry, business community, and the public are also invited to comment on any impact the proposed regulation may have on small businesses. The Division has reviewed the proposed regulation and determined that the regulation does not impose a direct or significant impact on a small business, or directly restrict the formation, operation, or expansion of a small business.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation is also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at **www.leg.state.nv.us**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice of Workshop to Solicit Comments on the Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Blasdel Building
Capitol Complex
Carson City, NV 89710

State Capitol
Capitol Complex
Carson City, NV 89710

Capitol Press Room
State Capitol Basement
Carson City, NV 89710

County Clerk
Courthouse
Carson City, NV 89710

Nevada State Library & Archives
Capitol Complex
Carson City, NV 89710

Carson City Library
900 North Rook Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Las Vegas Library
833 Las Vegas Blvd. North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Goldfield Public Library
Fourth & Cook Street
P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street
P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library

Washoe County Library

95 South R Street
P.O. Box 14
Virginia City, NV 89440

301 South Center Street
P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the workshop are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the workshop, (775) 687-4270, extension 260.

DATED this _____ day of January, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

**NOTICE OF HEARING AND NOTICE OF INTENT
TO ACT UPON A TEMPORARY REGULATION**

Notice of Hearing for the Adoption of Regulations
of the Department of Business and Industry, Division of Insurance

The Department of Business and Industry, Division of Insurance (Division) will hold a public hearing at 1:00 p.m., on March 13, 2003, immediately following a public workshop, at the offices of the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Interested persons may also participate through a simultaneous video-conference conducted at the Bradley Building, 2501 East Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

**RULES OF PRACTICE AND PROCEDURE FOR
THE WORKERS' COMPENSATION APPEALS PANEL**

The following information is provided pursuant to the requirements of NRS 233B.060:

1. This regulation provides due process standards for appeals made to the Workers' Compensation Appeals Panel.
2. This regulation is necessary to implement rules of practice and procedure for the Workers' Compensation Appeals Panel.
3. Estimated economic effect of the regulation:
Public Effect: None
On Regulated Business: None
4. This regulation, in accordance with NRS 616B.790, shall carry out the provisions of NRS 616B.760 to 616B.790, inclusive.
5. The regulation does not overlap or duplicate other state or federal regulations or statutes.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701. Written submissions must be received by the Division on or before March 7, 2003. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation to be will be available at the offices of

the Division, 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, and 2501 East Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the **State of Nevada Register of Administrative Regulations** which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at **<http://www.leg.state.nv.us>**. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will 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 of hearing has been posted at the following locations:

Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701

Department of Business and Industry
Division of Insurance
2501 East Sahara Avenue, Suite 302
Las Vegas, NV 89104

Legislative Counsel Bureau
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Carson City, NV 89710

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720 Court Street

Goldfield Public Library
Fourth & Cook Street

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Winnemucca, NV 89445

Battle Mountain Branch Library
P.O. Box 141
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street
P.O. Box 1390
Hawthorne, NV 89415

Tonopah Public Library
171 Central Street
P.O. Box 449
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Pershing County Library
1125 Central Avenue
P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street
P.O. Box 14
Virginia City, NV 89440

Washoe County Library
301 South Center Street
P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Clark County Library
1401 East Flamingo Road
Las Vegas, NV 89119

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Commissioner's secretary in writing at 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, or by calling no later than 5 working days prior to the hearing, (775) 687-4270, ext. 260.

DATED this _____ day of January, 2003.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

**PROPOSED TEMPORARY REGULATION OF THE DIVISION
OF INSURANCE OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

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

AUTHORITY: NRS 616B.790

Section 1. *Chapter 616B of NAC is hereby amended by adding thereto, new sections to read as follows:*

GENERAL PROVISIONS

Sec. 2. *As used in this chapter, unless the context otherwise requires:*

1. *“Advisory Organization” means the organization designated by the commissioner pursuant to NRS 686B.1764.*
2. *“Commissioner” means the commissioner of insurance.*
3. *“Division” means the division of insurance of the department of business and industry.*
4. *“Insurer” means any private carrier.*
5. *“Intervener” means a person, other than an original party to a proceeding, whose pecuniary interests may be directly and immediately affected by the proceeding and who has secured an order from the Panel Chair granting leave to intervene.*
6. *“Panel” means the appeals panel for industrial insurance appointed pursuant to NRS 616B.760.*
7. *“Panel Chair” means the chairperson of the Panel as elected pursuant to NRS 616B.762,* Deleted: *or his designee*
or his designee as may be determined from time to time.
8. *“Petitioner” means any policyholder or employer (other than a self-insured employer) who determines that the circumstances unique to his situation warrant a review of the application of the insurer or the advisory organization’s classification and/or experience rating system.*
9. *“Respondent” means any person who is requested to respond to an appeal such as the advisory organization or the insurer.*

Sec. 3.

1. Except as otherwise provided, Section 3 to Section 19 inclusive, shall:

(a) Govern all practice and procedure before the panel under NRS 616B.760 to 616B.790, inclusive.

(b) Will be liberally construed to secure the just and speedy determination of all issues presented to the panel.

2. In special cases, where good cause appears, not contrary to statute, deviation from these rules will be permitted if stipulated to by all parties of record.

Sec. 4. *A petitioner wishing to present a grievance before the Panel must make a written request by mail or electronic mode in accordance with NRS 719.250 to the division designee at the following addresses:*

*Department of Business and Industry
Division of Insurance
788 Fairview Drive, Suite 300
Carson City, NV 89701*

*Fax: (775) 687-3937
Telephone: (775) 687-4270
e-mail: insinfo@doi.state.nv.us*

Sec. 5. *In the request for hearing, the petitioner shall set forth the following:*

- 1. A statement that a hearing is requested;*
- 2. A clear, simple statement of the issue or question to be resolved; and*
- 3. A statement of any statutes, rules, agency decisions or other authorities that the petitioner believes may be relevant.*

Sec. 6. *The petitioner may, at any time prior to the hearing, withdraw his request for hearing by submitting a written request by mail or electronic mode to the office identified in section 4.*

Sec. 7.

1. The panel chair or his designee, upon his own motion or the motion of a party, may hold a prehearing conference for any of the following purposes:

- (a) Formulating or simplifying the issues;*
- (b) Obtaining documents that will avoid unnecessary delays;*
- (c) Arranging for the exchange of proposed exhibits or prepared expert testimony; or*
- (d) Expediting any other matters for the orderly conduct and the disposition of the proceedings or settlements thereof.*

2. The agreements, admissions or stipulations made by the parties in a pre-hearing conference must be made a part of the record. These agreements, admissions or stipulations will be binding upon the parties during the course of subsequent proceedings, unless otherwise stipulated to by all the parties of record with the consent of the panel chair.

Sec. 8.

1. Within 30 days of the receipt of a request for hearing, the chair or his designee shall set a hearing date within 90 days of receipt of the petition.

2. Notice of a hearing served pursuant to subsection 1 must specify:

- (a) The purpose of the hearing; and*
- (b) The date, time and location of the hearing.*

Sec. 9.

Appearances and representation of parties must be made as follows:

1. A party may appear in person or may be represented by an attorney or an authorized representative of the business.

2. A party, if other than a natural person, may appear:

- (a) If a partnership, by a partner.*
- (b) If a corporation, by an officer or other authorized representative or regular employee.*
- (c) If a municipal corporation, by an authorized officer, agent or employee.*
- (d) If an unincorporated association, by an authorized representative, officer or employee.*

3. If a party chooses to be represented by an attorney, the attorney must be one who is admitted to practice and in good standing before the highest court of any state of the United States.

Sec. 10.

1. A petitioner may request that the hearing be closed. If the panel agrees that the information is proprietary, the hearing will be closed. The result of the closed hearing will be made part of the public record.

2. The panel's efforts are directed toward promoting consistency and fairness in all decisions, while ensuring compliance with all rules pertaining to classifications, rating and experience modifications. The panel shall conduct its business as informally as possible under the circumstances.

3. In any hearing, the panel chair may formally order briefs or a statement of facts filed by the date set by him. The panel chair may grant an extension for the filing of the required documents if the motion or stipulation requesting the extension is filed with the panel chair before the date set for filing the required documents. The panel chair shall issue a written decision on the request for extension.

4. Briefs or statements of fact must be filed with the panel chair and be accompanied by an acknowledgment showing service on all other parties of record.

5. A person who has made the request for a hearing has the burden of proof.

6. In a hearing before the panel, the order in which argument will ordinarily be received from the parties is:

(a) The panel chair will provide a brief orientation;

(b) The petitioner will present the issues in dispute and requested action;

(c) Intervenors may make a presentation to the panel;

(d) The respondent will present information addressing actions taken; and

(e) Rebuttal by the petitioner.

7. A quorum of not fewer than four panel members must be present at a hearing to conduct any business. A simple majority of the panel members in attendance at any hearing must endorse any decision.

Sec. 11. *The panel may, in its discretion, either before or during a hearing, grant continuances or recesses.*

Sec. 12. *At the time and place set for the hearing, if the petitioner fails to appear, the panel may, in its discretion, dismiss the proceeding with or without prejudice or may recess the hearing for a period of time to be set by the panel to enable the party to attend.*

Sec. 13.

1. The hearing will not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.

2. Hearsay evidence, as that term is used in civil actions, may be admitted for the purpose of supplementing or explaining other evidence.

3. The rules of privilege will be applied as they are applied in civil actions.

4. Irrelevant, cumulative and unduly repetitious evidence is not admissible, nor is incompetent evidence, as that term is used in civil trials, with exception of hearsay evidence as above provided.

Sec. 14.

1. If a transcript of any hearing held before the panel is requested by the petitioner or the insurer, the petitioner or insurer must furnish the reporter, pay for the transcript and deliver a copy of the transcript to the division within 20 days after the hearing. If both the petitioner and insurer request a transcript of the hearing, the cost of the transcript shall be shared equally.

2. All meetings shall be in compliance with chapter 241 of NRS.

3. An audiotape or other recording of the hearing shall be made and retained for at least one year and is considered a public record.

Sec. 15.

- 1. A person who wishes to intervene in a hearing must secure an order from the panel chair granting leave to intervene before he will be allowed to participate in the hearing.*
- 2. A petition for leave to intervene must be in writing and must clearly identify the proceeding in which the petitioner seeks to intervene.*
- 3. The petition must set forth the name and address of the petitioner and contain a clear and concise statement of the direct and immediate interest of the petitioner in the proceeding, state the manner in which the petitioner will be affected by the proceeding and outline the matters relied upon by the petitioner as a basis for his request to intervene.*
- 4. If affirmative relief is sought, the petition must contain a clear and concise statement of relief sought and the basis thereof, together with a statement as to the nature and quantity of evidence the petitioner will present if the petition is granted.*

Sec. 16. *A petition to intervene and proof of service of copies thereof on all other parties of record must be filed with the division not less than 2 days before commencement of the hearing. Thereafter, the petition must state a substantial reason for the delay or it will not be considered.*

Sec. 17.

- 1. If a member of the panel determines that he has a personal interest or a conflict of interest, directly or indirectly, with a party to a hearing or the subject matter of the hearing, the panel chair may appoint a substitute member for that hearing who has the same qualifications of the member with the conflict.*
- 2. A conflict of interest may be waived if, after full written disclosure of the facts raising such a conflict, all parties to the appeal agree in writing to the hearing of the appeal by the member. Such waiver must be filed with the panel chair before the hearing. If the panel chair is the member with the conflict of interest, the waiver must be filed with the commissioner.*
- 3. The member of the panel representing the advisory rating organization shall be deemed not to have a conflict of interest with respect to the advisory organization if it is a party to a hearing.*

4. The member of the panel representing the division of insurance shall be deemed not to have a conflict of interest with respect to the division of insurance if it is a party to a hearing or has been involved in the handling of the appeal.

Sec. 18.

1. The decision of the panel must:

(a) Be in writing;

(b) Include a statement of facts, analysis, opinion and appeal rights;

(c) Be issued by the panel chair within 30 days after the hearing unless the panel orders an extension of time to reconvene to consider additional information; and

(d) Be delivered to the petitioner and other interested parties in person or by first class mail.

2. Rulings of the panel may be appealed pursuant to the provisions of NRS 616B.787 and 679B.310. A party wishing to appeal a decision of the panel must direct the appeal to the commissioner. The commissioner will conduct such a hearing pursuant to the provisions of NRS 679B.310 to 679B.370 inclusive.