

LCB File No. R108-09

**PROPOSED REGULATION OF THE ADMINISTRATOR OF
THE DIVISION OF INDUSTRIAL RELATIONS 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 616A.400.

A REGULATION relating to providing permanent partial disability evaluations for claims accepted pursuant to NRS 616C.180.

Section 1. Chapter 616C of NAC is hereby amended by adding thereto the provision set forth as section 8 of this regulation.

Section 2. As used in this regulation, unless the context otherwise requires, the words and terms in sections 3 to section 10, inclusive have meanings ascribed to them in section 3 to section 10, inclusive, of this regulation.

Section 3. NAC 616A.480 Use, alteration, printing and distribution of certain posters and forms. (NRS 616A.400, 616A.417)

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.

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.

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-9(c), Permanent Partial Disability Worksheet for NRS 616C.180 stress claims.*
- ~~{(h)}~~ (m) D-10(a), Election of Method of Payment of Compensation.
- ~~{(m)}~~ (n) D-10(b), Election of Method of Payment of Compensation for Disability Greater than 25 Percent.
- ~~{(n)}~~ (o) D-11, Reaffirmation of Lump Sum Request.
- ~~{(o)}~~ (p) D-12(a), Request for Hearing - Contested Claim.
- ~~{(p)}~~ (q) D-12(b), Request for Hearing - Uninsured Employer.
- ~~{(q)}~~ (r) D-13, Injured Employee's Right to Reopen a Claim Which Has Been Closed.
- ~~{(r)}~~ (s) D-14, Permanent Total Disability Report of Employment.
- ~~{(s)}~~ (t) D-15, Election for Nevada Workers' Compensation Coverage for Out-of-State Injury.
- ~~{(t)}~~ (u) D-16, Notice of Election for Compensation Benefits Under the Uninsured Employer Statutes.
- ~~{(u)}~~ (v) D-17, Employee's Claim for Compensation - Uninsured Employer.
- ~~{(v)}~~ (w) D-18, Assignment of Claim for Workers' Compensation - Uninsured Employer.
- ~~{(w)}~~ (x) D-21, Fatality Report.
- ~~{(x)}~~ (y) D-22, Notice to Employees - Tip Information.
- ~~{(y)}~~ (z) D-23, Employee's Declaration of Election to Report Tips.
- ~~{(z)}~~ (aa) D-24, Request for Reimbursement of Expenses for Travel and Lost Wages.
- ~~{(aa)}~~ (bb) D-25, Affirmation of Compliance with Mandatory Industrial Insurance Requirements.
- ~~{(bb)}~~ (cc) D-26, Application for Reimbursement of Claim-Related Travel Expenses.
- ~~{(cc)}~~ (dd) D-27, Interest Calculation for Compensation Due.
- ~~{(dd)}~~ (ee) D-28, Rehabilitation Lump Sum Request.
- ~~{(ee)}~~ (ff) D-29, Lump Sum Rehabilitation Agreement.
- ~~{(ff)}~~ (gg) D-30, Notice of Claim Acceptance.
- ~~{(gg)}~~ (hh) D-31, Notice of Intention to Close Claim.
- ~~{(hh)}~~ (ii) D-32, Authorization Request for Additional Chiropractic Treatment.
- ~~{(ii)}~~ (jj) D-33, Authorization Request for Additional Physical Therapy Treatment.
- ~~{(jj)}~~ (kk) D-34, CMS 1500 Billing Form.
- ~~{(kk)}~~ (ll) D-35, Request/Agreement for a Physician or Chiropractor.
- ~~{(ll)}~~ (mm) D-36, Request for Additional Medical Information and Medical Release.
- ~~{(mm)}~~ (nn) D-37, Insurer's Subsequent Injury Checklist.
- ~~{(nn)}~~ (oo) D-38, Injured Worker Index System Claims Registration Document.

- ~~{oo}~~ *(pp)* D-39, Physician's Progress Report - Certification of Disability.
- ~~{pp}~~ *(qq)* D-41, International Association of Industrial Accident Boards and Commissions POC 1.
- ~~{qq}~~ *(rr)* D-43, Employee's Election to Reject Coverage and Election to Waive the Rejection of Coverage for Excluded Persons.
- ~~{rr}~~ *(ss)* D-44, Election of Coverage by Employer; Employer Withdrawal of Election of Coverage.
- ~~{ss}~~ *(tt)* D-45, Sole Proprietor Coverage.
- ~~{tt}~~ *(uu)* D-46, Temporary Partial Disability Calculation Worksheet.
- ~~{uu}~~ *(vv)* D-48, Proof of Coverage Notice.
- ~~{vv}~~ *(ww)* D-49, Information Page.
- ~~{ww}~~ *(xx)* D-50, Policy Termination, Cancellation and Reinstatement Notice.
- ~~{xx}~~ *(yy)* D-52, CMS (UB-92).
- ~~{yy}~~ *(zz)* D-53, Alternative Choice of Physician or Chiropractor and Referral to a Specialist.

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, Firemen and Police Officers' Physical Examination Information.
- (h) OD-8, Occupational Disease Claim Reporting.

3. The forms listed in this section must be accurately completed, including, without limitation, a signature and a date if required by the form. An insurer or employer may designate a third-party administrator as an agent to sign any form listed in this section.

4. An insurer, employer, injured employee, provider of health care, organization for managed care or third-party administrator may not use a different form or change a form without the prior written approval of the Administrator.

5. The ~~Industrial Insurance Regulation Section~~ *Workers' Compensation Section* will be responsible for printing and distributing the following forms:

- (a) C-4, Employee's Claim for Compensation/Report of Initial Treatment;
- (b) D-12(b), Request for Hearing - Uninsured Employer;
- (c) D-16, Notice of Election for Compensation Benefits Under the Uninsured Employer Statutes;
- (d) D-17, Employee's Claim for Compensation - Uninsured Employer; and
- (e) D-18, Assignment of Claim for Workers' Compensation - Uninsured Employer.

6. Each insurer or third-party administrator is responsible for printing and distributing all other forms listed in this section. The provisions of this subsection do not prohibit an insurer, employer, provider of health care, organization for managed care or third-party administrator from providing any form listed in this section.

7. Upon the request of the Administrator, an insurer, employer, provider of health care, organization for managed care or third-party administrator shall submit to the Administrator a

copy of any form used in this State by the insurer, employer, provider of health care, organization for managed care or third-party administrator in the administration of claims for workers' compensation.

Section 4. NAC 616C.002 Adoption by reference of American Medical Association's Guides to the Evaluation of Permanent Impairment. (NRS 616A.400, 616C.110)

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, 5th Edition, published by the American Medical Association.

2. A copy of the publication may be obtained from the Order Department, American Medical Association, P.O. Box 930876, Atlanta, Georgia 31193-0876, by telephone at (800) 621-8335, or on the Internet at ~~[www.amapress.com]~~ www.amabookstore.com, for the price of ~~[\$129]~~ \$139 for persons who are members of the Association, or ~~[\$149]~~ \$159 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 October 1, 2003, to an increase in the compensation he receives for that disability.

Section 5. NAC 616C.021 Rating physician or chiropractor: Designation; qualifications; maintenance of designation; authority; review of rating evaluation by Administrator. (NRS 616A.400, 616C.490)

1. The designation of a rating physician or chiropractor pursuant to NRS 616C.490 must be in writing.

2. 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) Completing:

(I) An appropriate level of training, as determined by the Administrator, related to industrial health from a nationally recognized program that provides training related to industrial health; or

(II) One year or more of experience concerning industrial health in private practice. The Administrator shall determine whether the experience in private practice concerning industrial health is sufficient to qualify for designation as a rating physician or chiropractor on a case-by-case basis.

(2) Except as otherwise provided in subsection 3, successfully completing a course on rating disabilities, in accordance with the most recent edition of the Guide, that is approved by the Administrator.

(3) Except as otherwise provided in subsection 3, passing an examination on evaluating disabilities and impairments that is administered by the American Board of Independent Medical Examiners or its successor organization, or by any other organization or company recognized by the Division.

(4) Except as otherwise provided in subsection 3, passing the Nevada Impairment Rating Skills Assessment Test which is administered by the American Academy of Expert Medical Evaluators or its successor organization and which examines the practical application of the rating of disabilities in accordance with the Guide with a score of 75 percent or higher.

(c) Demonstrate an understanding of:

(1) The regulations of the Division related to the evaluation of permanent partial disabilities; and

(2) The Guide.

3. The Administrator may exempt an ophthalmologist or psychiatrist who is authorized to practice in this State from the requirements set forth in subparagraphs 2, 3 and 4 of paragraph (b) of subsection 2 and authorize an ophthalmologist or psychiatrist to evaluate injured employees with impaired vision ~~or~~, brain function, *or mental or behavioral disorders* according to his area of specialization.

4. In order to maintain designation as a rating physician or chiropractor, the physician or chiropractor must:

(a) Except as otherwise provided in subsection 5, perform ratings evaluations of permanent partial disabilities when selected pursuant to NRS 616C.490, except disabilities related to an employee's vision or brain function resulting from an industrial accident or occupational disease;

(b) Schedule and perform 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;

(c) Except as otherwise provided in subsection 5, serve without compensation for a period not to exceed 1 year on the panel to review ratings evaluations established pursuant to NAC 616C.023 upon the request of the Administrator;

(d) Except as otherwise provided in subsection 5 and after the date of designation as a rating physician or chiropractor, successfully complete biennially a course *that is approved by the Administrator* on rating disabilities, in accordance with the ~~most recent edition of the Guide~~ *Fifth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment*, ~~that is approved by the Administrator~~; and

(e) Except as otherwise provided in subsection 5, if the physician or chiropractor passed an examination concerning an edition of the Guide that is not the most recent edition adopted by the Administrator to become designated as a rating physician, pass the Nevada Impairment Rating Skills Assessment Test which is administered by the American Academy of Expert Medical Evaluators or its successor organization and which examines the practical application of the rating of disabilities in accordance with the Guide with a score of 75 percent or higher.

5. If an ophthalmologist or psychiatrist has been designated as a rating physician and wishes to maintain such designation, the Administrator may exempt the ophthalmologist or psychiatrist who is authorized to practice in this State from the requirements set forth in paragraphs (a), (c), (d) and (e) of subsection 4 and authorize the ophthalmologist or psychiatrist to continue to evaluate injured employees with impaired vision ~~or~~, brain function, *or mental or behavioral disorders* according to his area of specialization.

6. 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.

7. 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.

8. 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 6. NAC 616C.103 Rating evaluation of injured employee: Requirements; award of payment; appeal. (NRS 616A.400, 616C.490)

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 ~~or~~; **or**
- (3) Resulted in mental or behavioral disorders as the result of a claim that has been accepted pursuant to NRS 616C.180; or**

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 completed form designated in NAC 616A.480 as D-35, Request/Agreement for a 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 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;
- (4) The form designated in NAC 616A.480 as D-35, Request/Agreement for a Physician or Chiropractor; and
- (5) The form designated in NAC 616A.480 as D-36, Request for Additional Information and Medical Release.

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.

5. Except as otherwise provided in subsection 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, after it receives the properly executed award papers from the injured employee or his representative.

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.

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.

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.

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.

Section 7. NAC 616C.476 Rating physician or chiropractor: Performance of evaluation and calculation of entitlement to compensation. (NRS 616A.400, 616C.110, 616C.490)

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. The rating physician or chiropractor shall not consider any factor other than the degree of physical impairment of the whole man in calculating the entitlement to compensation.

2. In performing an evaluation of a permanent partial disability, a rating physician or chiropractor shall not use:

(a) Chapter 14, "Mental and Behavioral Disorders," of the Guide *unless the claim was accepted pursuant to NRS 616C.180*; or

(b) Chapter 18, "Pain," of the Guide.

Section 8. *When performing an evaluation of a permanent partial disability for a claim accepted pursuant to NRS 616C.180, a rating physician shall use DIR Form D-9c to determine the percentage of impairment under Chapter 14, "Mental and Behavioral Disorders," of the Guide.*

Section 9. NAC 616C.487 Limitation on percentage of impairment. (NRS 616A.400, 616C.490) The percentage of impairment in any specific rating or combination of ratings may not exceed 100 percent of the applicable extremity or of the whole ~~man~~ *person*.

Section 10. NAC 616C.490 Apportionment of impairments. (NRS 616A.400, 616C.490)

1. If any permanent impairment from which an employee is suffering following an accidental injury or the onset of an occupational disease is due in part to the injury or disease, and in part to a preexisting or intervening injury, disease or condition, the rating physician or chiropractor, except as otherwise provided in subsection 9, shall determine the portion of the impairment which is reasonably attributable to the injury or occupational disease and the portion which is reasonably attributable to the preexisting or intervening injury, disease or condition. The injured employee may receive compensation for that portion of his impairment which is reasonably attributable to the present industrial injury or occupational disease and may not receive compensation for that portion which is reasonably attributable to the preexisting or intervening injury, disease or condition. The injured employee is not entitled to receive compensation for his impairment if the percentage of impairment established for his preexisting or intervening injury,

disease or condition is equal to or greater than the percentage of impairment established for the present industrial injury or occupational disease.

2. Except as otherwise provided in subsection 9, the rating of a permanent partial disability must be apportioned if there is a preexisting permanent impairment or intervening injury, disease or condition, whether it resulted from an industrial or nonindustrial injury, disease or condition.

3. A precise apportionment must be completed if a prior evaluation of the percentage of impairment is available and recorded for the preexisting impairment. The condition, organ or anatomical structure of the preexisting impairment must be identical with that subject to current evaluation. Sources of information upon which an apportionment may be based include, but are not limited to:

(a) Prior ratings of the insurer;

(b) Other ratings;

(c) Findings of the loss of range of motion; ~~for~~

(d) Information concerning previous surgeries~~;~~; *and*

(e) For claims accepted pursuant to NRS 616C.180, other medical or psychological records regarding prior the prior mental or behavioral condition.

4. If a rating evaluation was completed in this State for a previous industrial injury or occupational disease involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present industrial injury or occupational disease, an apportionment must be determined by subtracting the percentage of impairment established for the previous industrial injury or occupational disease from the percentage of impairment established for the present industrial injury or occupational disease, regardless of the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment used to determine the percentage of impairment for the previous industrial injury or occupational disease.

5. Except as otherwise provided in subsection 6, if a rating evaluation was completed in another state for a previous injury or disease involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present industrial injury or occupational disease, or if no previous rating evaluation was performed, the percentage of impairment for the previous injury or disease and the present industrial injury or occupational disease must be determined by using the Guide, as adopted by reference pursuant to NAC 616C.002. The apportionment must be determined by subtracting the percentage of impairment established for the previous injury or disease from the percentage of impairment established for the present industrial injury or occupational disease.

6. If precise information is not available, and the rating physician or chiropractor is unable to determine an apportionment using the Guide as set forth in subsection 5, an apportionment may be allowed if at least 50 percent of the total present impairment is due to a preexisting or intervening injury, disease or condition. The rating physician or chiropractor may base the apportionment upon X rays, historical records and diagnoses made by physicians or chiropractors or records of treatment which confirm the prior impairment.

7. If there are preexisting conditions, including, without limitation, degenerative arthritis, rheumatoid variants, obesity, ~~for~~ congenital malformations, *or for claims accepted under NRS 616C.180 mental or behavioral disorders*, the apportionment must be supported by documentation concerning the scope and the nature of the impairment which existed before the industrial injury or the onset of disease.

8. A rating physician or chiropractor shall always explain the underlying basis of the apportionment as specifically as possible by citing pertinent data in the health care records or other records.

9. If no documentation exists pursuant to subsection 7 or 8, the impairment may not be apportioned.