

LCB File No. R149-09

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

October 5, 2009

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

AUTHORITY: Assembly Bill 24 (2009); Senate Bill 195 (2009); Senate Bill 361; and NRS 616A.400.

Section 1. Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth in sections 2 to ____, inclusive of this regulation.

Sec. 2. *In addition to those injuries described in Section 11 of Assembly Bill 24 (2009), “Catastrophic injury” also means:*

- 1. An injury resulting in a coma or vegetative state;*
- 2. An injury resulting in loss or significant impairment of function of one or more vital internal organs or organ systems;*
- 3. An injury resulting in the mangling, crushing or amputation of a major portion of an extremity; or*
- 4. An injury that the insurer and injured employee agree should be administered as a claim for a catastrophic injury. An injured employee may submit a request to his insurer that his claim should be administered as a claim for a catastrophic injury. The request must be in writing. If an injured employee submits a written request, the insurer shall issue a written determination within 30 days of receipt.*

Sec. 3. *An adjuster who administers a claim for a catastrophic injury shall have:*

- (a) a minimum of four years of experience in adjusting lost time workers’ compensation claims; or*
- (b) a minimum of two years of such experience and work under the direct supervision of an adjuster who has a minimum of four years’ experience in adjusting lost time claims in Nevada.*

Sec. 4. 1. *A life care plan must include the formation of a team to manage and monitor the life care plan, consisting of, without limitation, a:*

- (a) registered nurse,*
 - (b) vocational rehabilitation counselor, and*
 - (c) qualified and competent adjuster.*
- 2.** *The team for the life care plan must assess the following:*
- (a) number of home or hospital visits necessary or appropriate by the registered nurse and vocational rehabilitation counselor;*
 - (b) injured employee’s life expectancy;*
 - (c) injured employee’s medical needs, including, without limitation:*

- (1) surgery,
- (2) prescription medication,
- (3) physical therapy, and
- (4) maintenance therapy;
- (d) impact, if any, of any preexisting medical conditions.
- (e) the injured employee's potential for rehabilitation, taking into account the injured employee's:

- (1) medical condition,
- (2) age,
- (3) educational level,
- (4) experience,
- (5) motivation, and
- (6) any other considerations deemed relevant.

3. The team for the life care plan shall establish a schedule for meeting or communicating with the injured worker, if practicable, and the treating physician for the purpose of, without limitation,

- (a) determining the need for special medical attention or treatment,
- (b) medical devices, including, without limitation,
 - (1) wheelchairs,
 - (2) prostheses,
 - (3) specially equipped or designed motor vehicles,
 - (4) psychological counseling or testing.

4. The team for the life care plan must provide a plan of action for treatment, vocational rehabilitation or possible permanent total disability consideration.

5. In addition to any claim determinations affecting the injured employee's rights under his claim, or responses to requests on behalf of the injured worker for specific action or information on the claim, or other contact that may occur, the insurer shall:

(a) schedule a personal meeting to take place at least once per calendar month between the adjuster and the injured employee, a family member, or designated representative concerning the status of the claim; or,

(b) if a personal meeting is not practicable, provide a written report at least once per calendar month, sent by first class mail, to the injured employee, family member or designated representative concerning the status of the claim and soliciting requests and information.

6. An insurer that accepts a claim for a catastrophic injury will base the life care plan on the condition of the injured employee at the time the life care plan is developed. If there is a substantial or significant change in the injured employee's condition or prognosis, the insurer shall amend the life care plan to reflect the change in condition or prognosis.

7. An insurer that did not originally accept a claim as a claim for a catastrophic injury shall, thereafter, designate the claim as a claim for catastrophic injury if the claim meets the definition of a claim for catastrophic injury in Section 11 of Assembly Bill 24 (2009) and this section.

Sec. 5. 1. The Division may refuse to recommend an application for final approval for a certificate of registration as an administrator pursuant to subsection 3 of NRS 683A.08524 for one or more of the following reasons:

- (a) One or more of the applicant's principles was formerly a principle of a third-party administrator or insurer which has an outstanding debt owing to the Division or an injured employee.*
- (b) The information in the application reveals that the applicant does not maintain adequate staffing to properly administer claims.*
- (c) Any other reason the Division determines may hinder the prompt and efficient payment of compensation to injured employees.*

2. For purposes of this section principle means an owner, manager, officer, proprietor or any other person having a significant degree of control over the administration of claims. For purposes of this section a debt includes, but is not limited to, an administrative fine, benefit penalty or a three times penalty imposed pursuant to NRS 616C.065.

Sec. 6. Chapter 616D of NAC is hereby amended by adding thereto a new section to read as follows:

1. For purposes of paragraph h of subsection 1 of NRS 616D.120, to determine whether a the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has engaged in a pattern of untimely payments to injured workers, the Administrator will consider:

(a) The reasons given by the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company for making the payments after the time set forth in the applicable statute or regulation;

(b) The efforts made by the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company to make the payments within the time set forth in the applicable statute or regulation;

(c) The date the payments were made;

(d) The number of injured employees who have received untimely payments;

(e) The number of untimely payments;

(f) The length of the time period in which the untimely payments occurred;

(g) Whether the amount of any payments due, or any portion of that amount, was unknown, unclear or ambiguous, and whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company took action or exercised reasonable diligence to clarify the uncertainty or ambiguity and to make the payments due within the time set forth in the applicable statute or regulation or at any time thereafter;

(h) Whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company was advised, in writing, by the affected injured employee or his representative that payments could be delayed pending the outcome of any further negotiations relating to the compensation that was due;

(i) Whether successive or numerous untimely payments have been made to a single injured employee;

(j) Whether the untimely payments involved the same form of compensation; e.g., temporary total disability;

(k) Whether the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company knew or reasonably should have known of the circumstances resulting in or likely to result in multiple untimely payments to one or more injured employees;

(l) Whether the insurer, organization for managed care or third-party administrator established the policies and procedures required by NAC 616D.311 and complied with those policies and procedures;

(m) Whether the untimely payments were the result of error, lack of good faith or diligence, neglect or another cause within the control of the insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company; and

(n) Any other circumstance which the Administrator deems relevant to determine whether untimely payments to one or more injured employees constitutes a pattern of untimely payments that warrants awarding a benefit penalty to a particular injured employee.

2. Timeliness shall be determined by the statute or regulation specifically applicable to the type of payment involved.

3. The insurer or third party administrator shall record in the claim file the date on which any payment of compensation or other relief is made pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS is made to an injured employee or other person, has been deposited for mailing to the injured employee or other person. This information must be provided to the Administrator upon request.

Sec. 7. NAC 616D.315 is hereby amended to read as follows:

NAC 616D.315 For the purposes of paragraph (c) of subsection 1 of NRS 616D.120, to determine whether an insurer, organization for managed care, health care provider, third-party administrator ~~{or}~~, employer *or employee leasing company* has unreasonably delayed payment to an injured employee of compensation found to be due him by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS, the Administrator will consider:

1. The reasons given by the insurer, organization for managed care, health care provider, third-party administrator ~~{or}~~, employer *or employee leasing company* for making the payment after the time set forth in paragraph (c) of subsection 1 of NRS 616D.120;

2. The efforts made by the insurer, organization for managed care, health care provider, third-party administrator ~~{or}~~, employer *or employee leasing company* to make the payment within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, if any;

3. The date the payment was made;

4. Whether the amount of compensation due, or any portion of that amount, was unclear or ambiguous and whether the insurer, organization for managed care, health care provider, third-party administrator ~~{or}~~, employer *or employee leasing company* took action or exercised reasonable diligence to clarify the uncertainty or ambiguity and to pay the compensation due within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, or at any time thereafter;

5. Whether the amount of compensation due, or any portion of that amount, was unknown or could have been determined through the exercise of reasonable diligence within the time set forth in paragraph (c) of subsection 1 of NRS 616D.120, or at any time thereafter;

6. Whether the insurer, organization for managed care, health care provider, third-party administrator ~~{or}~~, employer *or employee leasing company* was advised, in writing, by the injured employee or his representative that payment of the compensation due could be delayed pending the outcome of any further negotiations relating to the compensation that was due;

7. Whether the insurer, organization for managed care, health care provider or third-party administrator established the policies and procedures required by NAC 616D.311 and complied with those policies and procedures;
8. Whether the delay in the payment of the compensation due, or any portion thereof, was the result of error, lack of good faith or diligence, neglect or another cause within the control of insurer, organization for managed care, health care provider, third-party administrator ~~for~~, employer *or employee leasing company*; and
9. Any other circumstance which the Administrator deems relevant to determine whether a delay in the payment of compensation due was reasonable.