

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

LCB File No. R136-14

Effective June 28, 2016

AUTHORITY: §1, NRS 616A.400 and 616C.490; §2, NRS 616A.400.

A REGULATION relating to industrial insurance; revising provisions relating to determinations of percentage of impairment for preexisting industrial injuries or occupational diseases; repealing certain provisions relating to affidavits of businesses concerning industrial insurance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations require a rating physician or chiropractor to determine an apportionment for a previous industrial injury or occupational disease and a corresponding reduction from the percentage of impairment established for the present injury or disease if a rating evaluation was completed for the previous injury or disease. The apportionment is to be based on that previous rating evaluation regardless of the edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* used at the time of calculating the percentage of the previous impairment. (NAC 616C.490) The Nevada Supreme Court has interpreted subsection 9 of NRS 616C.490 as requiring the determination of the percentage of impairment of a previous industrial injury or occupational disease pursuant to the same methodology, including the same edition of the *Guides*, as is employed to calculate the percentage of impairment of the present injury or disease. (*PACT v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011)) **Section 1** of this regulation revises existing regulations to require that, regardless of what state the previous rating evaluation was completed in or what edition of the *Guides* was used to complete the rating evaluation, percentages of impairment for both present and previous injury or disease are calculated using the edition of the *Guides* adopted by reference by the Division of Industrial Relations of the Department of Business and Industry in NAC 616C.002. **Section 1** also removes a reference to obesity as a preexisting condition.

Existing regulations place certain requirements upon a public licensing agency accepting a written affidavit concerning the maintenance of certain types of industrial insurance in conjunction with an application for a business license pursuant to NRS 244.33505 or 268.0955. Among those requirements was the duty of a public licensing agency to maintain and submit certain information regarding licensees to the Administrator of the Division of Industrial Relations of the Department of Business and Industry. (NAC 616A.500) Existing regulations also require that the affidavits concerning the maintenance of certain types of industrial insurance must substantively conform to Form D-25 of the Workers' Compensation Section.

(NAC 616A.510) In 2011, the Nevada Legislature amended NRS 244.33505 and 268.0955, authorizing certain licensing agencies to accept applications for business licenses and supporting affidavits and attestations electronically. To resolve the conflict between the existing regulations governing written affidavits and the 2011 statutory amendments authorizing electronic affidavits and attestations, **section 2** of this regulation repeals NAC 616A.500 and 616A.510, eliminating certain requirements regarding the contents and forms of the affidavits and eliminating the requirement that the licensing agencies maintain and submit information regarding licensees to the Administrator.

Section 1. NAC 616C.490 is hereby amended to read as follows:

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~~ 8, 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 or her 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 or her impairment if the percentage of impairment established for his or her 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~~ 8, 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;
- (d) Information concerning previous surgeries; or
- (e) For claims accepted pursuant to NRS 616C.180, other medical or psychological records

regarding 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.~~

~~—5.1~~ Except as otherwise provided in subsection ~~6.1~~ 5, if a rating evaluation was completed in another state *or using an edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment other than the edition of the Guides as adopted by*

reference pursuant to NAC 616C.002 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}~~ *recalculated* by using the ~~{Guide,}~~ *Guides*, 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,}~~ 5. If precise information is not available, and the rating physician or chiropractor is unable to determine an apportionment using the ~~{Guide}~~ *Guides* as set forth in subsection ~~{5,}~~ 4, 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,}~~ 6. If there are preexisting conditions, including, without limitation, degenerative arthritis, rheumatoid variants, ~~{obesity,}~~ 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,}~~ 7. 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.

~~19.1~~ 8. If no documentation exists pursuant to subsection ~~17.1~~ 6 or ~~18.1~~ 7, the impairment may not be apportioned.

Sec. 2. NAC 616A.500 and 616A.510 are hereby repealed.

TEXT OF REPEALED SECTIONS

616A.500 Duties of public licensing authority. (NRS 616A.400)

1. A public licensing authority shall not accept an affidavit required pursuant to NRS 244.33505 or 268.0955, unless:

(a) Each question on the affidavit is answered or marked “NA” if the question does not apply to the applicant; and

(b) The affidavit is signed by the applicant before an employee of the office issuing the license.

2. A public licensing authority shall maintain an alphabetical list of the names of those businesses to which it issues a license. The list must include, without limitation:

(a) The name and address of the principal owner of the business;

(b) The name and address of the business; and

(c) The class or nature of the business.

3. The public licensing authority shall submit:

(a) A copy of the list required by subsection 2; and

(b) The name of each person who compiled the list,

↳ to the Administrator or the Administrator's designated agent not later than 15 days after the end of each month during which the public licensing authority has issued a license.

4. As used in this section, "public licensing authority" means any city council, board of county commissioners or other governing body for any political subdivision of this State which requires a license to engage in a business.

616A.510 Affidavit concerning industrial insurance. (NRS 616A.400)

1. An affidavit required pursuant to NRS 244.33505 or 268.0955 must substantively conform to Form D-25 of the Workers' Compensation Section.

2. Form D-25 is available from any office of the Workers' Compensation Section at no cost.

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS**

IN THE MATTER OF THE ADOPTION OF PERMANENT REGULATION RELATING TO INDUSTRIAL INSURANCE; REVISING PROVISIONS RELATING TO DETERMINATIONS OF PERCENTAGE OF IMPAIRMENT FOR PREEXISTING INDUSTRIAL INJURIES OR OCCUPATIONAL DISEASES; REPEALING CERTAIN PROVISIONS RELATING TO AFFIDAVITS OF BUSINESSES CONCERNING INDUSTRIAL INSURANCE; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
LCB FILE NO. R136-14**

INFORMATIONAL STATEMENT

The following statement is submitted for the amendment of Nevada Administrative Code (NAC) Chapter 616C.490 relating to the apportionment of permanent partial disability evaluations and repeal of NAC 616A.500 and NAC 616A.510.

1. A clear and concise explanation of the need for the adopted regulation.

The Division of Industrial Relations, Workers' Compensation Section's proposed amendment to NAC 616C.490 and repeal of NAC 616A.500 and NAC 616A.510 will: conform the language of NAC 616C.490 with the Nevada Supreme Court holding in PACT v. Blake, supra, which struck down subsection 4; and repeal NAC 616A.500 and NAC 616A.510, to comply with Sections 1.7 and 3.5 of Chapter 521, Statutes of Nevada 2011, at pages 3589 and 3592-93, amending NRS 244.33505 and NRS 268.0955, respectively, regarding Form D-25.

2. A description of how public comment was solicited, a summary of public responses, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notices of workshop and notices of intent to act upon a regulation were sent by U.S. mail and e-mail to over 2,450 persons who were known to have an interest in the subject of the Nevada Industrial Insurance Act, as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Department of Business and Industry, Division of Industrial Relations, Workers' Compensation Section, www.dirweb.state.nv.us/WCS/wcs.htm, mailed to all county libraries in Nevada and posted at the following locations:

Division of Industrial Relations
400 W. King Street, #400
Carson City, NV 89703

Department of Business and Industry
555 E. Washington Ave., #4900
Las Vegas, NV 89101

Workers' Compensation Section
1301 N. Green Valley Pkwy., #200
Henderson, NV 89074

NVOSHA
4600 Kietzke Lane, # F-153
Reno, NV 89502

Grant Sawyer Building
555 E. Washington Ave,
Las Vegas, NV 89101

Bradley Building
2501 E. Sahara Ave.
Las Vegas, NV 89104

Nevada State Library, Archives and Public Records
100 Stewart Street
Carson City, NV 89701

A workshop was held via videoconference on January 5, 2015, at 9:00 am at the Nevada State College offices located at 303 S. Water Street, Room 119, Henderson, Nevada and Western Nevada College offices located at Cedar Building, Room 307, 2201 W. College Parkway, Carson City, Nevada. Thereafter on or about December 18, 2015, the Administrator of the Department of Business and Industry, Division of Industrial Relations (Administrator) issued a Notice of Intent to Act on Proposed Regulations which incorporated in the proposed amendments the suggestions of the parties attending the January 5, 2015 workshop. A public hearing was held via videoconference on February 18, 2016, at 9:00 am at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada and the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada.

A copy of this summary of the public response to the proposed regulation may be obtained from Donald C. Smith, Esq. Senior Division Counsel, at Division of Industrial Relations, 1301 N. Green Valley Pkwy., #200, Henderson, NV 89074, 702-486-9070, or e-mail to donaldcsmith@business.nv.gov.

3. The number of persons who:

- (a) Attended each hearing;**
- (b) Testified at each hearing; and**
- (c) Submitted to the agency written comments.**

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information, if provided to the agency conducting the hearing:

- (a) Name;**
- (b) Telephone number;**
- (c) Business address;**
- (d) Business telephone number;**
- (e) Electronic mail address; and**
- (f) Name of entity or organization represented.**

At the **January 5, 2015 Workshop**, which was held at two sites via videoconference, in Henderson 11 attended; in Carson City 8 attended. No oral or written testimony was received.

Written comments were received shortly before the February 18, 2016 public hearing. A summary of the written comments follows:

February 16, 2016 e-mail from Chris Bosse, Renown, 50 West Liberty Street, Suite 1100, Reno, Nevada 89501; Telephone: 775-982-5761; E-mail: cbosse@renown.org. Renown suggested the word “Guides” be revised to state, “version of the Guides in use at the time of the current evaluation” in Section 1, amending NAC 616C.490 (4) and (5), and requested that “obesity” be stricken as a preexisting condition in Section 1, NAC 616C.490(6).

At the **February 18, 2016 Hearing on the Notice of Intent to Act on Proposed Regulations**, which was held at two sites via videoconference, in Las Vegas 7 attended; in Carson City 5 attended. No oral or written testimony was received.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

The Division sent by U.S. Mail and via e-mail the Notice of Public Workshops to Solicit Comments on Proposed Regulations to over 2,450 persons who were known to have an interest in the subject on Chapters 616A through 616D, inclusive, and 617 of the Nevada Administrative Code, as well as any persons who had specifically requested such notice.

A copy of this summary of the public response to the proposed regulations may be obtained from Donald C. Smith, Esq. at the Division of Industrial Relations, Legal Department, 1301 N. Green Valley Pkwy., #200, Henderson, NV 89074, telephone (702) 486-9070, or e-mail to donaldsmith@business.nv.gov.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulations without change.

A number of revisions were suggested in the written comment received before the February 18, 2016 hearing. Each of those suggested revisions which were not adopted is discussed separately below.

On Section 1, amending NAC 616C.490, a suggestion was made that in subsections 4 and 5, the word “Guides” be deleted and replaced with the phrase, “version of the Guides in use at the time of the current evaluation.” This suggestion was not adopted as the Division believes the proposed language is redundant as the current language in both subsections references the version adopted pursuant to NAC 616C.002, which identifies the version of the American Medical Association’s Guides to the Evaluation of Permanent Impairment in use in Nevada.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

(a) Both adverse and beneficial effects.

The Division anticipates no adverse or beneficial effects, both direct and indirect, on small businesses it regulates or on the public as the result of the adoption of this regulation. The effects, if any, will be solely to private workers' compensation insurance carriers.

(b) Both immediate and long-term effects.

The Division anticipates no immediate or long-term effects, both direct and indirect, on small businesses it regulates or on the public as the result of the adoption of this regulation. The effects, if any, will be solely to private workers' compensation insurance carriers.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed regulation does not include any provisions which duplicate or are more stringent than existing federal, state or local standards.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulations do not provide for a new fee or increase an existing fee.

12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Administrator has determined that the proposed regulations do not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Administrator considered the fact that the proposed amendments conform the language of NAC 616C.490 with the Nevada Supreme Court holding in PACT v. Blake, supra, which struck down subsection 4; and repeal NAC 616A.500 and NAC 616A.510, to comply with Sections 1.7 and 3.5 of Chapter 521, Statutes of Nevada 2011, at pages 3589 and 3592-93.