

**PROPOSED REGULATION OF THE
BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT INJURY
ACCOUNT FOR ASSOCIATIONS OF SELF-INSURED PUBLIC OR
PRIVATE EMPLOYERS**

LCB FILE NO. R026-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 02/08/2018**

**REVISED PROPOSED REGULATIONS OF THE
BOARD FOR THE ADMINISTRATION OF THE
SUBSEQUENT INJURY ACCOUNT FOR ASSOCIATIONS
OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS**

LCB File No. R132-15

November 16, 2017

EXPLANATION – Matter in Double Underline, **Red** is new; matter in ~~Strikeout~~, **Blue** is material to be omitted.

AUTHORITY: NRS 616B.572(1) and (2); NRS 616B.575(6); NRS 616B.578(6); NRS 233B.040(1)(4); NRS 233B.050; NRS 233B.100(1); and NRS 233B.120.

A REGULATION relating to industrial insurance; authorizing reimbursement from the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers for the purchase of an annuity or payment of a lump sum; revising provisions governing the rating of permanent physical impairments; providing for petitions to the Board for the Administrations of the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers to adopt, amend or repeal regulations; providing for petitions to the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board; providing procedures for service upon associations, the Administrator of the Division of Industrial Relations of the Department of Business and Industry and the Board; revising provisions governing hearings before the Board and requests for continuances; and providing other matters properly relating thereto.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections **2** to **14**, inclusive, of this regulation.

Sec. 2. ~~1.~~ ~~1.~~ For ~~the~~ purposes of determining whether a preexisting impairment is a permanent physical impairment:

~~(a) If, when the preexisting **impairment of the employee arose out of and in the course of his or her employment and the** permanent physical impairment is, itself, an industrial injury:~~

(a) If the injured employee has been assigned a rating of permanent impairment for the preexisting industrial injury which is no longer appealable, the Board may choose to accept the rating for the preexisting ~~impairment~~ industrial injury if ~~the rating~~ it was assigned based on the edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* that was in effect on the date ~~on~~ which ~~when~~ the preexisting ~~impairment was rated;~~ impairment was rated;

(b) ~~If a~~ industrial injury was rated;

(b) ~~If the preexisting industrial injury has not been rated according to the AMA “Guides” when the application comes before the Board for reimbursement, the Board may decline to rule on the claim for reimbursement from the Account has been submitted to the Administrator pursuant to NAC 616B.7773 but the preexisting impairment has not yet been assigned a rating, the Administrator may choose not to make a recommendation on the claim~~ until a determination has been made concerning the preexisting ~~impairment~~ industrial injury in accordance with the edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* ~~that was~~ in effect on the date ~~on which~~ when the ~~subsequent~~ preexisting industrial injury is rated; and

(c) If a ~~claim for reimbursement from~~ an application against the Account has been submitted to the ~~Administrator pursuant to NAC 616B.7773~~ Board and a rating has been assigned to the preexisting ~~impairment~~ industrial injury, but the rating is not deemed final, the ~~Administrator~~ Board may ~~choose not to make a recommendation~~ refrain from ruling on the claim application for reimbursement until the rating has been finalized in accordance with the edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* ~~that is~~ in effect on the date ~~on which~~ when the preexisting ~~impairment~~ industrial injury is rated.

2. The Board and the Administrator are not bound by any agreement between an injured employee and an association concerning:

 (a) The rating of permanent impairment assigned to a preexisting condition or a subsequent industrial injury;

(b) The edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* which should be used to assign a rating of permanent impairment to a preexisting condition or a subsequent industrial injury; or

(c) The apportionment of the percentage of disability between the preexisting condition and the subsequent injury.

Sec. 3. ~~A claim~~ An application for reimbursement ~~from~~ against the Subsequent Injury Account for the Associations of Self-insured Public or Private Employers submitted pursuant to NAC 616B.7773 must include, without limitation, the name of the person designated ~~by the association~~ to accept service on behalf of the ~~association submitting the claim~~ applicant and the address and any facsimile number and electronic mail address at which that person may be served with notices, pleadings and other documents. Except as otherwise provided in section 5 of this regulation, all notices, pleadings and other documents, including, without limitation, any recommendation of the Administrator, must be served on the person designated in the ~~claim pursuant to this section~~ application.

Sec. 4.

~~1.~~ At the time the Administrator determines that an application against the Account is complete and makes a recommendation to the Board regarding ~~a claim for reimbursement from the Account~~, the Administrator shall serve on the person designated in the application for reimbursement pursuant to sections 3 and 5 of this regulation, ~~as applicable, a copy of a copy of the recommendation, a copy of each document and record upon which the Administrator primarily relied to make the recommendation and a list of the witnesses whom the Administrator may call to testify in support of the recommendation.~~

~~2.~~ If the Administrator recommends denying the claim, in whole or in part, in addition to the documents served pursuant to subsection 1, the Administrator shall serve on the person designated pursuant to sections 3 and 5 of this regulation, ~~as applicable, a copy of each document and record upon which the Administrator primarily relied in making the recommendation.~~

~~Sec. 5.~~

~~1.~~ An association that ~~Sec. 5. 1.~~ An applicant who is represented by legal counsel or a lay advocate shall ~~provide written notice by service on~~ upon the Board and the Administrator, ~~provide notice~~ of the name and business address of the legal counsel or lay advocate, ~~as applicable, and representing the applicant.~~ Notice shall include any facsimile number and electronic mail address at which the legal counsel or lay advocate ~~must~~ may be served with ~~any notices, documents and pleadings and other documents.~~

2. If an ~~association~~ applicant has provided the notice required by subsection 1, the Board and the Administrator will thereafter serve all notices, pleadings and other documents on the legal counsel or lay advocate designated pursuant to subsection 1, ~~as applicable, exclusively above,~~ unless the ~~association~~ applicant provides written notice to legal counsel for the Board and the Administrator of a change in representation.

Sec. 6. _____

_____ Service on the Board of any filing, pleading, notice or other document required by NAC 616B.777 to 616B.779, inclusive, and sections 2 to 14, inclusive, of this regulation must be made on the legal counsel ~~designated by~~ for the Board. If the Board ~~has~~ does not ~~designated~~ have legal counsel, service must be made on the Chair of the Board in care of the Administrator for transmission to the Board.

~~Sec. 7.~~

_____ Except for the submission of a ~~claim~~ application for reimbursement ~~from~~ against the Subsequent Injury Account of the Associations of Self-insured Public or Private Employers pursuant to NAC 616B.7773, service on the Administrator of any filing, pleading, notice or other document required by NAC 616B.777 to 616B.779, inclusive, and sections 2 to 14, inclusive, of this regulation must be made on the legal counsel ~~designated by~~ for the Administrator.

Sec. 8.-

1. Except as otherwise provided by a specific statute or regulation, service of any notice, pleading or other document required by the provisions of NAC 616B.777 to 616B.779, inclusive, and sections 2 to 14, inclusive, of this regulation ~~must~~ may be ~~hand-delivered or~~ made by hand delivery, first-class mail, electronic mail or facsimile.

2. Service by hand delivery shall be deemed complete upon the delivery of the document to the person on whom service is to be made pursuant to sections 3, 5, 6 and 57 of this regulation, ~~as applicable, by delivery of the document or pleading~~ to a person of suitable age and discretion ~~who has the~~ and with authority to accept service at the business address of the person on whom service is to be made or to a person of suitable age and discretion at the dwelling house or usual place of residence ~~abode~~ of the person upon whom service is to be made ~~pursuant to sections 3 and 5 of this regulation, as applicable.~~

3. Service by first-class mail shall be deemed complete 3 days after the date on which the document is deposited in the United States Postal Service, enclosed in a sealed envelope upon which first class postage was fully paid and correctly addressed and mailed to the business address, dwelling house or usual place of residence ~~abode~~ of the person upon whom service is to be made ~~pursuant to sections 3 and 5 of this regulation, as applicable.~~

4. Service by electronic mail shall be deemed complete upon the successful transmission of the electronic mail to the electronic mail address of:

- (a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation;
- (b) The legal counsel of the Board or the Administrator if service is made pursuant to section 6 of this regulation; or
- (c) The Administrator's legal counsel or the Administrator if service is made pursuant to section 7 of this regulation.

5. Service by facsimile shall be deemed complete upon the successful transmission of the facsimile to the facsimile number of:

- (a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, ~~as applicable;~~ or
- (b) The legal counsel of the Board or the Administrator if service is made pursuant to section 6 of this regulation; or
- (c) The Administrator or ~~legal counsel designated by the Administrator~~ Administrator's legal counsel if service is made pursuant to section 7 of this regulation.

~~5. Service by facsimile shall be deemed complete upon the successful transmission of the facsimile to the facsimile number of:~~

~~(a) The person upon whom service is to be made pursuant to sections 3 and 5 of this regulation, as applicable;~~

~~(b) The legal counsel of the Board or the Administrator if service is made pursuant to section 6 of this regulation; or~~

~~(c) The Administrator or legal counsel designated by the Administrator, if service is made pursuant to section 7 of this regulation.~~

~~Sec. 9.~~

~~1.~~

Sec. 9. 1. Except as otherwise provided in subsection 2, as used in NRS 616B.578(4), the Board interprets the term ~~“written~~written records” to include:

(a) Any written documentation kept ~~by the employer~~ in the ordinary course of business: __

(1) Contemporaneously with the hiring of the injured employee; ~~or~~ __

(2) During the continued employment of the injured employee ~~and~~by the employer but before the date of the subsequent injury. _____

(b) Any other written documentation if the Board determines that the written documentation constitutes an objective record of the self-insured employer’s knowledge of the injured employee’s preexisting permanent physical impairment: _

(1) At the time the self-insured employer hired the injured employee; ~~or~~ __

(2) During the continued employment of the injured employee ~~and~~ provided the written documentation existed and was possessed by the self-insured employer at the time of hire or before the date of the subsequent industrial injury; in a retention in employment case; or

(3) At any time before the injured employee suffered the subsequent injury for which reimbursement is being requested.

2. An affidavit, letter, self-serving declaration or other document regarding the preexisting impairment which is prepared after the subsequent injury ~~does~~will not satisfy the requirement of proof of the employer’s knowledge that the injured employee suffered from a preexisting permanent physical impairment.

3. ___ To satisfy the requirement set forth in subsection 4 of NRS 616B.578 that the association establish by written records that the employer had knowledge of the preexisting permanent physical impairment of the injured employee, the association must establish by a

preponderance of the evidence that the contemporaneous written records show that: _

(a) The self-insured employer had knowledge of the preexisting permanent physical impairment ~~of the injured employee~~ at the time the injured employee was hired; or _

(b) The self-insured employer:

~~(1) Became aware~~ acquired knowledge of the preexisting permanent physical impairment of the injured employee after the employee was hired and before the date ~~occurrence~~ of the subsequent industrial injury; and

~~(2) Continued to employ the employee notwithstanding the employer's knowledge of the preexisting~~ the self-insured employer maintained the injured employee in its employ as of the subsequent industrial injury.

~~Sec. 10. 1.~~ For the purpose of determining whether a preexisting injury is a permanent physical impairment-

~~Sec. 10-~~

~~1.~~ For the purposes of subsection 3 of NRS 616B.578, the ~~ratings of~~ permanent impairment ratings of two or more body parts, organ systems or organ functions may not be added together or combined to reach a rating of permanent impairment of ~~six~~ percent or more of the whole person if evaluated according to the AMA "Guides" to qualify a condition as a permanent physical impairment pursuant to NRS 616B.578(3).

2. The Administrator shall, and the Board will, use the American Medical Association's *Guides to the Evaluation of Permanent Impairment* ~~as a reference for determining whether a rating of permanent impairment totals 6~~ in the determination of whether the preexisting permanent physical impairment would support a rating of six percent or more ~~of the whole person~~ to qualify a condition as a permanent physical impairment pursuant to NRS 616B.578(3). _

3. Multiple ~~body parts unrelated to a subsequent injury~~, unrelated body parts in the preexisting condition, that are not related to the subsequent industrial injury, will not be considered as one impairment. ~~Each~~ At least one body part, organ system or organ function included within a claim for reimbursement from the Account must satisfy, itself, the definition of a "permanent physical impairment" ~~to qualify the body part, organ system or organ function before eligibility for reimbursement under the claim~~. may be established.

~~Sec. 11.~~

~~1.~~ Except as otherwise provided in this subsection 2 or by specific statute or regulation, the Board may authorize reimbursement ~~from~~ against the Account for the payment ~~liquidation~~ of benefits ~~in the form of a~~ by lump-sum payment if: _

(a) The applicant meets the requirements of NRS 616B.578; _

- (b) The compensation to be paid was due;_
- (c) A ~~lump-sum~~ lump sum payment is reasonable, in the best interest of the injured employee and will eliminate any contingent future liability against the Account; and_
- (d) ~~A lump-sum~~ The lump sum payment: _

- _____ (1) ~~If~~ Meets the ~~payment~~ requirements of NRS 616C.495, is ~~if~~ being made for a permanent partial disability, ~~m,~~ or
- _____ (2) Meets the requirements of NRS 616C.495; 590 or
- _____ (2) ~~If the payment~~ 616C.595, is ~~if~~ being made for vocational rehabilitation services, ~~meets the requirements of NRS 616C.590 or 616C.595.~~ _

2. ___ The Board will not authorize reimbursement from the Account for:

- _____ (a) Any payment transaction that is prohibited by NRS 616C.410; or_
- _____ (b) A lump-sum payment that was not made to an injured employee.

3. ___ In considering whether to authorize reimbursement from the Account for the payment liquidation of benefits in the form of a by lump sum payment pursuant to this section, the Board may consider any information that it deems relevant, including, without limitation, the application of any statute or regulation._

Sec. 12.-

_____ 1. ___ An association ~~that~~ who purchases an annuity to ensure the payment of a claim that is filed with the association pursuant to chapters 616A to 617, inclusive, of NRS may submit a claim satisfy, in whole or in part, a claim for a subsequent industrial injury approved by the Board may submit an application for reimbursement from the Account in accordance with NAC 616B.777 to 616B.779, inclusive, and sections 2 to 14, inclusive, of this regulation.

_____ 2. ~~The association may submit, as provided in subsection 3, a claim for~~ for the purchase of the annuity for the benefit of the injured employee.

_____ 2. ___ If the Board approves reimbursement for the amount of compensation that the annuity paid to cost of the annuity pursuant to subsection 1, the association may be reimbursed from the Account for compensation received by the injured employee for whom from the annuity was purchased.

_____ 3. ~~The association may submit a claim for reimbursement,~~ not to exceed the cost of the annuity.

_____ 3. ___ Reimbursement may be sought annually on the anniversary date of the purchase of

the annuity, or more frequently with good cause shown, but the aggregate amount of reimbursement paid to the association must not, at any time, exceed the compensation paid the injured worker.

4. The Board will not approve or pay a claim for reimbursement for an annuity submitted pursuant to this section for:

- (a) Any amounts which, ~~in combination with previous reimbursements,~~ exceeds the lesser of:
 - (1) The price of the annuity; ~~and~~ or
 - (2) The aggregate amount of compensation that the annuity has paid to the injured employee; ~~and~~
 - (b) Attorney's fees relating to the purchase of the annuity; or
 - (c) Any administrative expenses or other expenses relating to the purchase of the annuity, including, without limitation, expenses for the copying of records.
5. ~~As used in this section, "good cause" includes, without limitation, a financial exigency or extraordinary circumstance.~~

Sec. 13. ~~_____~~

~~_____ 1. A petition may be filed with the Board requesting that the Board adopt, amend or repeal a regulation governing the administration of the Account ~~must include, without limitation:~~ _____ by the Board.~~

~~_____ 2. The petition filed with the Board pursuant to this section must include:~~

- ~~_____ (a) The name and mailing address of the petitioner; _____~~
- ~~_____ (b) A clear and concise statement of the regulation to be adopted, amended or repealed; _____~~
- ~~_____ (c) The reason for the adoption, amendment or repeal of the regulation; and _____~~
- ~~_____ (d) The ~~statutory~~ legal authority for the adoption, amendment or repeal of the regulation.~~

~~2. A petition requesting the adoption, amendment or repeal of a regulation as described in this section may ~~_____~~ 3. The original petition and five copies must be filed with the Board and, within 5 days after filing with the Board, with the Administrator, electronically. If such a petition is not filed electronically, the person filing the petition shall file an original and seven copies of the petition and any supporting documentation with the Board and, within 5 days after~~

~~filing with the Board,~~ the petitioner shall serve one copy on the Administrator, by ~~p~~ _____

(a) Personal service, ~~r~~ _____

(b) Registered mail or certified mail, return receipt requested; or

(c) Any electronic means permitted by these regulations.

~~34.~~ _____ The Board may decline to take action on ~~and return to the petitioner a~~ petition which does not ~~contain the information required by subsection 1 or was not filed pursuant to subsection 2.~~

~~_____4~~ satisfy the requirements of subsection 3, above.

~~_____5.~~ Except as otherwise provided in subsection ~~34,~~ the Board will hold a hearing to consider a petition ~~and notify the petitioner in writing of its decision within 30~~ filed with the Board pursuant to subsection 3 of this regulation not later than 45 days after the petition is filed ~~with the Board.~~ The Administrator may file with the Board a recommendation concerning ~~the~~ disposition of the petition not later than 15 days before the date of the hearing and shall, upon filing such a recommendation with the Board, ~~provide~~ serve a copy ~~to~~ of the recommendation on the petitioner.

~~56.~~ ~~—A person, other than an original party to a hearing to consider a petition _____~~

~~A Party, other than the original petitioner, who believes that ~~he~~ the Party or she may be directly and substantially affected by the hearing ~~and who wishes to participate in the hearing must secure an order from the Board granting the person~~ may seek leave to intervene in the hearing by filing with the Board a written motion to intervene. Such a motion must set forth the legal and factual basis in support of ~~the person's standing to intervene and for the person's~~ standing to file the motion to intervene. The motion shall also set forth separately the legal and factual basis of the person's position in favor of or opposition to the petition ~~and~~. The motion must be filed with the Board, ~~and served on the Administrator and the petitioner~~ not later than 20 days before the ~~hearing.~~ ~~If the Board grants such a motion~~ date of the hearing by:~~

(a) Personal service;

(b) Registered or certified mail, return receipt requested; or

(c) Any electronic means permitted by these regulations.

~~_____7.~~ If the motion to intervene is granted, the Board will enter an order allowing the person to participate as a party to the proceedings and ~~the Board will~~ take into consideration the intervenor's position ~~of the person~~ on the merits of the petition filed pursuant to subsection 6.

~~68.~~ _____ In conducting a hearing ~~to consider a~~ on the petition to alter, amend or repeal a regulation, the Board is not bound by the technical rules of evidence, and any informality in ~~a~~ the proceeding or in the manner of taking testimony does not invalidate any order, decision, ruling or regulation made, approved or confirmed by the Board. The ~~f~~ Nevada Rules of ~~e~~ Civil Procedure and

Evidence ~~of courts of this State~~ will be followed generally, but may be relaxed at the discretion of the Board if deviation from these technical rules ~~of evidence~~ will aid in determining the facts. _

~~7. — After the hearing~~ ^{9.} Within 45 days after the close of the final hearing on the merits of the petition, the Board will ~~provide~~ ^{serve} written notice of its decision ~~to~~ ^{on} the petitioner, the Administrator and any intervenor. ~~Such a~~ ^{The} notice ~~of decision~~ will include a brief statement of the Board's decision and the reasons supporting the decision. _

~~10.~~ ^{10.} If the Board grants the petition ~~to adopt, amend or repeal a regulation,~~ the Board will initiate ~~appropriate regulation-making proceedings~~ ^{regulation making procedures.} _

~~811.~~ ^{11.} — ~~—~~ A decision of the Board to grant or deny a petition pursuant to this section is a final decision for the purpose of judicial review. _

Reg 14

Sec. 14.—

~~—~~ ^{1.} Except as otherwise provided in subsection ~~104,~~ any interested person may petition the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board. ~~Such a~~

~~2.~~ ^{2.} A petition ~~filed with the Board pursuant to this section~~ must include, ~~without limitation:~~ _

- (a) The name and mailing address of the petitioner; _
- (b) The reason for the petition and a statement of the facts and law supporting the petition; and _
- (c) A clear and concise statement of the question to be decided by the Board and the relief sought by the petitioner. _

~~23. — A petition for the issuance of a declaratory order or advisory opinion as described in this section may~~ ^{23.} The original petition and five copies of the decision must be filed with the Board and, within 5 days after filing with the Board, ~~with the Administrator, electronically. If such a petition is not filed electronically, the person filing the petition shall file an original and seven copies of the petition and any supporting documentation with the Board and, within 5 days after filing with the Board,~~ the petitioner shall serve one copy on the Administrator. ~~Filing and service shall be by p:~~ _

- (a) ~~Personal service, r;~~ _
- (b) Registered mail or certified mail, return receipt requested; ~~or~~ _

(c) Any electronic means permitted by these regulations.

34. The Board may refuse to consider a petition which does not contain the information required by subsection 12 or was not filed and served pursuant to subsection 23.

45. The Administrator may file with the Board a response concerning the disposition of the petition not later than 45 days after service of the petition upon the Administrator and shall, within 5 days after filing such a response, provide a copy to the petitioner.

5. serve one copy of the Administrator's responses of the petition by:

(a) Personal service;

(b) Registered mail or certified mail, return receipt requested; or

(c) Any electronic means permitted by these regulations.

6. After providing written notice to the petitioner and the Administrator, the Board may:

- (a) Conduct an informal hearing to determine any preliminary matters that may expedite the disposition of the petition and issue reasonable orders that govern the conduct of a hearing on the merits of the petition.
- (b) Request that the petitioner submit additional information or arguments concerning the petition and allow the Administrator to file a response to any such additional information or arguments and, upon filing of such a response or at such other time as the Board may prescribe, provide a copy to the petitioner.
- (c) Consider relevant decisions that have been issued by the Board which apply or interpret the statute, regulation or decision in question.
- (d) Enter any reasonable order to assist in the review of the petition.

67. The Board may conduct a formal hearing on a petition or render without a hearing a decision on the petition based on the information submitted to the Board. The Board will notify the petitioner and the Administrator when it determines that it has received sufficient information to determine how to proceed with the petition and, within 10 days thereafter, provide ~~serve~~ notice of the date of the formal hearing or Administrator and petitioner that the petition will be decided without a formal hearing or serve on the Administrator and petitioner with a 45 day notice of the date of the formal hearing once the Administrator's time to file a reply has elapsed.

78. The decision of the Board must be based upon and limited to the information provided to the Board pursuant to this section.

89. Within 45 days after the date that the formal hearing is concluded or the date that

the Board gives notice that the petition will be decided without a formal hearing, the Board will issue a written declaratory order or advisory opinion disposing of the petition and mail a copy of the declaratory order or advisory opinion to the petitioner and the Administrator.

~~9~~10. The Board will maintain a record that is indexed by subject matter of each declaratory order or advisory opinion issued by the Board.

~~10~~1. A person may not petition the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board if the applicability of the statute, regulation or decision of the Board is at issue in any administrative, civil or criminal proceeding in which the person is a party.

~~11~~2.- A decision of the Board relating to a petition filed pursuant to this section is a final decision for the purpose of judicial review.

~~Sec. 15.~~ _____

_____ Sec. 15. NAC 616B.777 is hereby amended to read as follows:

_____ 616B.777 As used in NAC 616B.777 to 616B.779, inclusive, and sections 2 to 14, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NAC 616B.7731, 616B.7736 and 616B.7738 have the meanings ascribed to them in those sections.

~~Sec. 16.~~ _____

_____ NAC 616B.7773 is hereby amended to read as follows:

616B.7773 Claims (NRS 616B.572, 616B.578)

1. Except as otherwise provided in NAC 616B.779, the Board will approve or disapprove, in whole or in part:

- (a) Each claim application made for reimbursement ~~from~~against the Account by an association, if the claim application is completed by the association pursuant to the requirements set forth in this section; and
- (b) Any expenses of the association, related to each such claim application, that the Administrator has verified pursuant to the provisions of NAC 616B.707.

~~2.~~ To submit a claim

2. For an application to be approved in whole or in part, the applicant must prove by a preponderance of the evidence that all of the criterion for either NRS 616B.578 or NRS 616B.580 have been satisfied.

3. To submit an application to the Board, an association must:

- (a) Serve the ~~claim~~ application in writing, on the Administrator;
- (b) Include with the ~~claim~~ application a completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist" that is prescribed by the Administrator;
- (c) Organize the ~~claim~~ application in the manner prescribed in Form D-37 and number each of the pages in the claim sequentially; and
- (d) Include with the claim all information which is necessary to establish that the ~~claim~~ application should be paid from the Account. Such information must include, without limitation, the pertinent medical records of the injured employee who is the subject of the ~~claim and evidence adequate to support a finding by the Board that all requirements set forth in NRS 616B.578 or 616B.581 have been met.~~

~~3~~ application.

4. A copy of Form D-37 may be obtained from the Administrator or on the Internet website maintained by the Administrator at no cost.

45. An association that submits a ~~claim~~ application pursuant to subsection 2 shall, upon the request of the Administrator, provide copies of the records maintained by the ~~association and the~~ employer concerning the ~~claim~~ application to the Administrator.

56. Upon the request of the Administrator, a self-insured employer on behalf of whom an association has served an application for reimbursement on the Administrator, shall:

- (a) Allow the Administrator to inspect any records related to the self-insured's application that are maintained by the self-insured employer; or
- (b) Provide copies of those records to the Administrator.

7. The Administrator may refuse to process a claim that is incomplete or does not conform to the requirements of Form D-37. The Board will not deem a claim to be complete ~~as a result of simply because~~ the claim ~~being~~ was processed by the Administrator and forwarded to the Board.

68. This section does not prohibit or limit the Administrator from requiring or obtaining from the association, the employer or any other person any additional information relating to ~~a claim submitted pursuant to subsection 2.~~

~~Sec. 17. NAC 616B.7775~~ the application.

9. The Administrator's disposition of the application and recommendation to the Board is neither an express nor implied representation by the Administrator that the claimant's application is complete. Responsibility for the completion and accuracy of an application always rests with the applicant.

Sec. 17. NAC 616B.7777 is hereby amended to read as follows:

~~616B.7775— Upon the request of the Administrator, an association that serves a claim on the Administrator pursuant to NAC 616B.7773 shall:~~

~~1. Allow the Administrator to inspect any records related to the claim that are maintained by the association or a third party administrator of the association; or~~

~~2. Provide copies of those records to the Administrator.~~

~~Sec. 18. NAC 616B.7777 is hereby amended to read as follows:~~

~~616B.7777— 1. _~~

Written recommendation of Administrator; requirements. (NRS 616B.572, 616B.578)

1. Not later than 60 days after the date that a ~~claim~~ application is served on the Administrator pursuant to NAC 616B.7773, the Administrator shall: _

(a) Submit to the Board a recommendation concerning the approval or disapproval ~~in whole or in part of: _~~

(1) The ~~claim~~ application; and

(2) Any expenses of the association related to the ~~claim~~ application that the Administrator has verified pursuant to the provisions of NAC 616B.707; and

(b) Notify the association that submitted the claim or the person designated to accept service on behalf of the association of ~~that~~ the Administrator's recommendation to the Board.

2. The Administrator shall include with the recommendation the information necessary for the Board to evaluate the ~~claim~~ application and the expenses related to the ~~claim~~ application, including, without limitation:

(a) A statement of the issues of fact and law upon which the recommendation of the Administrator is based;

(b) A copy of each document upon which the Administrator based the recommendation; and

- (c) A list of each witness, if any, whom the Administrator would likely call before the Board to support the recommendation, if contested.—

3. Upon receipt of the recommendation of the Administrator, the Board will render a decision disposing of:—

_____ (a) The ~~claim~~ application; and—

(b) The association's expenses related to the ~~claim~~ application which have been verified by the Administrator after consideration in accordance with the provisions of NAC 616B.707.

Sec. 198. —

NAC 616B.7779 is hereby amended to read as follows:

~~616B.7779—1. If the Board denies a claim—~~

NAC 616B.7779 Request for hearing. (NRS 616B.572, 616B.578)

1. If the Board initially denies an application or any of the expenses related to a ~~claim~~ application after receipt of the Administrator's recommendation, the association that submitted the ~~claim~~ application may request a hearing before the Board.—

2. An association that wishes to request a hearing before the Board pursuant to subsection 1 must file the request, in writing, with the Board's legal counsel ~~of the Board not later than~~, within 30 days after the date that the Board's legal counsel ~~of the Board serves~~ gave notice of the initial decision of the Board upon the association.

3. ~~—The~~ Should the applicant fail to timely request a hearing before the Board upon the issuance of this initial denial in whole or in part of the application, the initial decision is the final decision of the Board.—

4. Should the applicant timely request a hearing on the Board's initial disposition of the application, the Board will conduct the hearing pursuant to the provisions of NAC 616B.7783 and 616B.7785.

Sec. 2019. —

NAC 616B.7783 is hereby amended to read as follows:

~~616B.7783—1.—~~

NAC 616B.7783 Hearing; Continuance; service of notice; prehearing statement. (NRS 616B.572, 616B.578)

1. If an association timely requests a hearing before the Board pursuant to NAC 616B.7779:

- (a) The Board will conduct a hearing not later than 45 days after the date that the request for a hearing is ~~erved by~~ filed with the ~~association~~ Board's legal counsel, unless the Chair of the Board grants a continuance upon his or her own motion or ~~upon the request of the Administrator or~~ the association who submitted the ~~claim~~ application pursuant to subsection 4 of this regulation.
- (b) The Chair of the Board shall serve notice of the date, location and time of the hearing on the Administrator and the association as soon as practicable, but not later than 10 days before the date of the hearing.
- (c) Not later than 5 days before the date of the hearing, the association shall:

_____ (1) Serve on the Administrator two copies of the prehearing statement described in subsection 2; and

_____ (2) Serve on the legal counsel of the Board six copies of the prehearing statement described in subsection 2. ~~The association~~ The association shall redact from the prehearing statement served on the legal counsel of the Board any information that may identify the injured employee who is the subject of the underlying worker's compensation claim. ~~The redacted information to be redacted~~ must include, without limitation, all references to the name, address, date of birth and social security number of the injured employee.

2. The association shall include in its prehearing statement:

(a) A statement of the issues of fact and law upon which the association bases its argument;

_____ (b) A redacted copy of each document which ~~was served on or obtained by the Administrator pursuant to NAC 616B.7773 and 616B.7775 and which~~ the association intends to ~~introduce~~ rely upon at the hearing;

_____ (c) A list containing the names of each witness, if any, whom the association intends to call at the hearing and a brief summary of the proposed testimony of each such witness;

~~(d) A copy of any other document the association believes it may need to place in~~

~~evidence as part of its initial presentation to the Board in support of its claim;~~

~~(e) A copy of any other document the association intends to rely upon to support its claim;~~

(~~f~~d) An estimate of the time that the association will need to present its evidence, testimony, argument and rebuttal at the hearing; and

~~(g)~~ (e) If the association requires a court reporter to be present at the hearing, a request that the Board provide a court reporter for the hearing and a statement attesting that the association will pay all costs related to the services of the court reporter and all costs that are necessary to provide the Board with a copy of the transcript of the hearing.

3. The Board may decline to admit into evidence untimely submissions of documents and records offered in support of a ~~claim~~ application. ~~An~~ Such untimely ~~submission~~ submittals includes, without limitation, a document or record that the Board concludes could have been attached to the pre-hearing statement. The Board may also decline to allow the testimony of a witness whose name was not timely disclosed.

4. A request for a continuance by the Administrator or an association must:

(a) Be in writing;

(b) State the reasons supporting the request;

(c) Include a statement of any extensions of time or continuances previously granted;

~~(d) Not be made for the reason of delay and include a statement to that effect;~~

~~(d)~~ (d) State that the request is not made for reasons of delay;

(e) Be filed by service upon the Board not later than 3 days before the date of the hearing unless extraordinary circumstances are shown or the Board finds that excusable neglect exists; and

(f) Be served upon each ~~other~~ party to the hearing upon filing with the Board.

5. A rebuttable presumption arises that the association has given the Administrator all the information which the association believes is necessary to support the claim and that the association believes the claim is ready for disposition by the Board ~~arises~~ if:

~~(a)~~ (a) A request for a continuance has been filed with the Board pursuant to subsection 4, after:

- _____ (b~~a~~) The association has submitted a claim for reimbursement to the Administrator;
- _____ (e~~b~~) The Administrator has completed a review of the claim and related information; and
- _____ (d~~c~~) The Administrator has made a recommendation regarding the claim to the Board.

Sec. 210. ~~_____~~ NAC 616B.7785 is hereby amended to read as follows:

~~_____ 616B.7785 1.~~

NAC 616B.7785 Hearing: Requirements; preparation of written decision; objections (NRS 616B.572, 616B.578)

1. The Board will conduct a hearing that is requested pursuant to NAC 616B.7779 fairly and impartially to ensure that the facts are elicited fully, all issues are adjudicated and any unnecessary delay is avoided.

2. To the extent consistent with the provisions of NAC 616B.777 to 616B.779, inclusive, and sections 2 to 14, inclusive, of this regulation, the Board will conduct the hearing pursuant to the provisions of ~~e~~Chapter 233B of ~~NRS~~the Nevada Revised Statutes that relate to contested cases ~~and, if practicable, t~~. The Board ~~will~~may apply the rules of procedure and evidence that apply to the district courts of this State in the disposition of the application.

3. Any objection to the conduct of the hearing, including, without limitation, an objection to the introduction of evidence, must be addressed to the Chair of the Board who, in consultation with the other members of the Board and the legal counsel of the Board, will rule upon the objection. If any evidence is excluded from the record, the party who is offering the evidence may make an offer of proof to the Chair of the Board. Such an offer of proof must be included in the record.

4. The Board will direct that an audio recording of the hearing be made, unless ~~the~~:

(a) ~~The Board~~ on its own ~~motion~~ requires that a court reporter record the hearing; or ~~the~~

(b) ~~The~~ association requests in advance that the Board provide a court reporter for the hearing and the Board approves the request. If the Board provides a court reporter for the hearing upon the request of the association, the association shall pay all costs related to the services of the court reporter and all costs that are necessary to provide the Board with a copy of the transcript of the hearing.

5. ~~_____~~ After the hearing, the Board will render a decision disposing of the

claim application based solely upon the record developed before the Board during the hearing and any continuation thereof.

6. _ If the Board denies a ~~claim~~ application for reimbursement in whole or in part, the Board may direct the legal counsel of the Board to prepare a written decision for the Board that includes findings of fact and conclusions of law for the decision. If the Board directs ~~the~~ its legal counsel ~~of the Board~~ to prepare a written decision, ~~the~~ legal counsel shall submit the written decision to the Board for approval. ~~If~~ Once the Board ~~approves~~ gives its final approval of the written decision, the Chair of the Board will sign ~~it as~~ the decision of the Board and the Board will serve its decision on the association.

7.- A decision of the Board, pursuant to this section is a final decision for the purpose of judicial review. The association may seek judicial review of the decision in the district court not later than 30 days after service of the decision on the association.

~~See EC. 22. — 1~~ NAC 616B.7787 is hereby amended to read as follows:

~~616B.7787~~

NAC 616B.7787 Request for transcript of hearing. (NRS 616B.572, 616B.578)

An association that requests a hearing before the Board pursuant to NAC 616B.7779 may request a transcript of any audio recording that is made of the hearing. If the association requests such a transcript, the association shall pay all costs related to the preparation of the transcript and all costs that are necessary to provide the Board with a copy of the transcript.

Sec. ~~23~~2. _____ NAC 616B.7771, 616B.7775 and 616B.7781 are hereby repealed.