

**AMENDED INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS**  
**AS REQUIRED BY NRS 233B.066**

The following informational statement as required by NRS 233B.066 is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapters 616A through 616D, inclusive, and Chapter 617 as follows:

1. EXPLANATION OF THE NEED FOR THE ADOPTED REGULATION

The proposed regulations, LCB File No. R134-20, are needed to update and bring current certain requirements presently codified in Nevada Administrative Code Chapters 616A through 616D, inclusive, and Chapter 617 to comport with recent legislative enactments. Specifically, the proposed regulations address changes enacted in Senate Bill No. 381, section 2, subsection (6), chapter 550, Statutes of Nevada 2019, at page 3442-43 regarding setting forth requirements for the certification of a list of physicians and chiropractors by an insurer pursuant to NRS 616C.087(6). The proposed regulation also adds a new provision defining average monthly wage (enacted in Senate Bill No. 377, section 2.8, chapter 549, Statutes of Nevada 2019, at page 3438). Additionally, the proposed regulations incorporate the provisions of Assembly Bill No. 492 (section 3.5 chapter 312, Statutes of Nevada 2019, at page 1902) which require inclusion of concurrent wages of an injured employee in the calculation of average monthly wage under certain circumstances. Further, the proposed regulations amend the current regulations to update standards adopted by reference and also amend the regulation regarding vocational rehabilitation programs pursuant to NRS 616C.560 (enacted in Assembly Bill 128, section 2, chapter 608 of Statutes of Nevada 2019, at pages 3975-76); and add a new regulation regarding the method of calculating benefit penalties as required by NRS 617.455(11) and NRS 617.457(16) (enacted in Assembly Bill No. 267, sections 4, subsection 10 and 11, and section 5, subsections 15 and 16, amending NRS 617.455 and 617.457 respectively, chapter 551, Statutes of Nevada 2017, at pages 3893-94 and 3896, respectively).

Moreover, the proposed regulations authorize the purchase of an annuity by a private carrier to provide compensation for an industrial injury or occupational disease; prohibit reimbursement from certain accounts for certain claim expenditures which are reimbursable to self-insured employers, associations of self-insured employers and private carriers from other sources; require certain information to be provided to the Administrator of the Division of Industrial Relations of the Department of Business and Industry and the Commissioner of Insurance; revise certain provisions which adopt by reference certain publications; require private carriers to submit proof of industrial insurance coverage by certain means and in certain formats; revise provisions governing the determination of annual expenditures for claims; require an insurer to report certain claim expenditures assumed and paid on behalf of another; require the certification of an insurer's list of treating physicians and chiropractic physicians under certain circumstances; define terms for the purposes of determining eligibility for compensation for certain mental injuries caused by extreme stress; revise requirements for a physician or chiropractic physician to be included on a panel to treat injured employees; revise requirements for the designation of a rating physician or chiropractic physician; revise conditions for warning, suspending and removing a physician or chiropractic physician from the list of rating physicians and chiropractic physicians;

require certain items to be contained in a claim file maintained by an insurer or third-party administrator; revise provisions governing the provision of certain items and information to an assigned rating physician or chiropractic physician before a rating evaluation; eliminate provisions governing the extension of vocational rehabilitation services; revise provisions governing the calculation of a benefit penalty; repeal certain provisions; and provide other matters properly relating thereto.

2. DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, A SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

Copies of the proposed regulation, notice of workshop, and notice of intent to act upon the regulation were made available at the Division's website, <http://dir.nv.gov/Meetings/Meetings>, with the notices also posted at the following locations:

The State of Nevada Website ([www.notice.nv.gov](http://www.notice.nv.gov))

The Nevada State Legislature Website (<http://leg.state.nv.us/App/Notice/A/>)

The Division of Industrial Relations Website (<http://dir.nv.gov/Meetings/Meetings>)

A Workshop was held to solicit comments on the proposed regulation on March 23, 2022. Additionally, the Division received written public comment on March 16, 2022 and March 23, 2022. Likewise, a Public Hearing was held on July 5, 2022, to solicit comments from the public on the adoption of the regulation.

The Division received written public comment on March 16, 2022, from Brett J. Barratt, Senior State Relations Executive of NCCI. Mr. Barratt commented that access to NCCI's Policy and Proof of Coverage Reporting Guidebook is available to NCCI customers permitted to submit policy and proof of coverage data to NCCI without charge at <http://www.ncci.com>, but that access to the Guidebook required authentication through the use of a User ID and password obtainable without charge by contacting NCCI customer service. Mr. Barratt requested that the regulation use the phrase "without charge" instead of "free of charge". Mr. Barratt made similar requests to the regulation's reference to NCCI's Electronic Transmission User Guide. Mr. Barratt further commented and provided language regarding NCCI's Policy Data Collection Tool.

The Division also received comments from the Division of Insurance staff regarding Sections 14 and 20 of the proposed regulations. Specifically, those comments referred to Regulation Section 14, Subsection 2, and Regulation Section 20, Subsection 5, referring to orders by the Commissioner of Insurance, and how in the past, the Commissioner would produce an Order for all decertifications of self-insured employers and associations, but how currently, the Commissioner does not produce an order for voluntary decertifications.

The Division further received written public comment from Mark Sektnan, Vice President of State Government Relations of the American Property Casualty Insurance Association (APCIA). As to earlier drafts of the regulation, the APCIA believed that the proposed amendments to Rule 34 were ambiguous and confusing. The proposed language in Rule 34(3)(a)(2) and Rule

34(3)(b) Rule 34(3)(c) are internally inconsistent. Subsection 34(3)(a)(2) states "There must be no benefit penalty imposed if...The insurer denies the claim pending medical investigation and, in a timely manner, conducts such an investigation, which results in the insurer issuing a determination of claim acceptance." However, Subsection 34(3)(b) provides "A benefit penalty of \$100 must be imposed for each day if the insurer has factual reporting, medical reporting, or both, which supports a good faith argument for the initial denial of the claim." Subsection 34(3)(c) provides a mandatory penalty of \$200 a day where there is not credible factual or medical reporting to support a good faith argument for the denial of the claim. The internal inconsistency and ambiguity is created because 34(3)(a)(2) states no benefit penalty is to be imposed if a timely investigation was undertaken and resulted in a claim acceptance. Subsection 34(3)(b), however, provides that a benefit penalty is mandatory if the insurer has factual or medical reporting supporting a good faith argument for the initial denial. The proposed rules should be modified to clarify that the penalty provisions of subsection 34(3)(b) are applicable only in claims where Rule 34(a)(1) or 34(a)(1) do not apply. A similar issue arises with Rule 34(3)(c) which creates a \$200 a day mandatory penalty if the insurer does not have any credible factual or medical reporting to support a good faith argument for the initial denial of the claim. The penalties set forth in subsections 34(3)(b) and subsection 34(3)(c) should not be triggered if the conditions of subsection 34(a)(1) or 34(a)(2) are satisfied because those provisions clarify that benefit penalties are not to be imposed under those circumstances. The mandatory language of the penalties in the subsequent sections creates ambiguity and inconsistency. The APCIA requested use of the phrase "If subsection (a)(1) or (a)(2) above do not apply," in the regulation.

A summary of the public's responses/comments may be obtained by contacting Rosalind Jenkins, Legal Secretary II, Division of Industrial Relations, 702-486-9014, or by writing to the Division of Industrial Relations, 3360 W. Sahara Ave., Ste. 250, Las Vegas, Nevada 89102.

3. THE NUMBER OF PERSONS WHO:
  - a. ATTENDED MARCH 23, 2022 WORKSHOP: 52
  - b. ATTENDED JULY 5, 2022, PUBLIC HEARING: 11
  - c. TESTIFIED AT MARCH 23, 2022, WORKSHOP: 11
  - d. TESTIFIED AT JULY 5, 2022, PUBLIC HEARING: 1
  - e. SUBMITTED WRITTEN COMMENTS RELATED TO MARCH 23, 2022, WORKSHOP: 2
  - f. SUBMITTED WRITTEN COMMENTS RELATED TO JULY 5, 2022, PUBLIC HEARING: 0
  
4. FOR EACH PERSON IDENTIFIED IN PARAGRAPHS (c) and (d) OF NUMBER 3 ABOVE, THE FOLLOWING INFORMATION, IF PROVIDED TO THE AGENCY CONDUCTING THE HEARING:

<b>March 23, 2022 Workshop</b>	
1	<b>Name:</b> Brett Barratt <b>Telephone number:</b> <b>Business address:</b> <b>Business telephone number:</b>

	<p><b>Electronic mail address:</b>  <b>Name or organization represented:</b> NCCI  <b>Summary of comment:</b> On Section 7 of the proposed regulation, NCCI no longer publishes in paper format, but all information is available on website. Requested use of phrase “without charge” instead of “free of charge”.</p>
2	<p><b>Name:</b> Lisa Anne Bickford  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Coventry (Mitchell/GenEx)  <b>Summary of comment:</b> Indicated support on Section 23 of regulation. On Section 25 of the regulation, she asked whether the Division considered if there was a mistake, whether there is an opportunity to provide an amendment to the application prior to removal on the panel. She also asked what constituted a change that must be reported to Division within 14 days.</p>
3	<p><b>Name:</b> Dalton Hooks  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b>  <b>Summary of comment:</b> On Section 23, supported language generally, but showed concern on use of phrase “salaried employees” because some employers don’t have salaried employees. On Section 24, opposes regulation based on comments made by other individuals. On Section 25, he noted that aptitude and interest could be grounds for removal. Noted general support on Section 34 of regulation.</p>
4	<p><b>Name:</b> Mike Charlton  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Henderson Professional Fire Fighters  <b>Summary of comment:</b> Opposed Section 24 of regulation.</p>
5	<p><b>Name:</b> Todd Ingalsbee  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Professional Fire Fighters of Nevada  <b>Summary of comment:</b> Opposed Sections 24 and 34 of regulation.</p>
6	<p><b>Name:</b> Tom Dunn</p>

	<p><b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Professional Fire Fighters of Nevada  <b>Summary of comment:</b> Opposed Sections 24 and 34 of the regulation. Impact on NRS 616C.180, NRS 616C.453, and NRS 617.457. Does not agree with definition of "grievous bodily harm" in regulation, and believes that PTSD claims would be delayed.</p>
7	<p><b>Name:</b> Jason Mills  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b>  <b>Summary of comment:</b> Opposes sections 24, 31, and 34. The list arbitrarily constricts/excludes other injuries from the definition of "grievous bodily harm". On Section 34, he opposed the amendment over statutory authority and stated regulation was undermining Legislative intent.</p>
8	<p><b>Name:</b> James Suarez  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Firefighters Local 1285  <b>Summary of comment:</b> Regulation Section 24 negatively affects members and narrows coverage. Opposes Section 34 of regulation, as increasing delays.</p>
9	<p><b>Name:</b> Jarrod Stewart  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Sparks Firefighters  <b>Summary of comment:</b> Opposes Sections 24 and 34.</p>
10	<p><b>Name:</b> Steven Richard Thompson  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> Clark County Firefighters  <b>Summary of comment:</b> Opposes Section 24 for same reasons as mentioned by other commenters. Opposes Section 34 of regulation.</p>

11	<p><b>Name:</b> Herb Santos, Jr.  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> NJA  <b>Summary of comment:</b> On Section 31, Mr. Santos stated that NJA opposed amendment to regulations.</p>
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<b>July 5, 2022 Public Hearing</b>	
1	<p><b>Name:</b> Steven Bennett  <b>Telephone number:</b>  <b>Business address:</b>  <b>Business telephone number:</b>  <b>Electronic mail address:</b>  <b>Name or organization represented:</b> APCIA  <b>Summary of comment:</b> Generally supports the regulation as presented. Thanked the Division for its work, specifically noting addition of clarity of previous version's Section 34. He commented that the previous version had more of a scale on benefit penalty amounts if there were factual or medical supporting basis, then \$100 or \$200 if no support. He requested that the scale be placed back into the regulation.</p>

5. DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

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Lastly, On February 7, 2022, the Division sent out a Small Business Impact Statement Questionnaire to interested parties on the Division’s Listserv at [WCSEEDUCATION@LISTSERV.STATE.NV.US](mailto:WCSEEDUCATION@LISTSERV.STATE.NV.US), which includes 17,889 business. The Questionnaire inquired from small businesses whether they believed there would be any economic effects, adverse or beneficial, direct or indirect, on their respective businesses from the proposed regulation. The Division also placed a link on its website to the questionnaire for interested parties

to complete, should they so choose. The deadline to return the questionnaire was February 15, 2022. As of this date, the Division did not receive any response to the Questionnaire.

A summary of affected businesses' responses, if any, may be obtained by contacting Rosalind Jenkins, Legal Secretary II, Division of Industrial Relations, 702-486-9014, or by writing to the Division of Industrial Relations, 3360 W. Sahara Ave., Ste. 250, Las Vegas, Nevada 89102.

**6. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.**

The Division received comments at the March 23, 2022 public workshop, written public comment on March 16, 2022, and March 23, 2022, as well as public comment at the public hearing on July 5, 2022. The concerns from public comment were received and considered, and the draft of the regulation adopted by the Division incorporated and considered the comments received.

**7. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:**

**A. ADVERSE AND BENEFICIAL EFFECTS**

The Division anticipates no adverse effects, either direct or indirect, on regulated businesses or the public as the result of these regulations. The adverse effects, if any, are difficult to determine at this time.

There will be no direct or indirect cost to regulated businesses or the public. The Division believes that there will be no beneficial effects, either direct or indirect, on regulated businesses as the result of these regulations.

**B. IMMEDIATE AND LONG-TERM EFFECTS**

The Division does not anticipate any immediate effects, either adverse or beneficial, on regulated businesses as a result of these regulations. There will be no direct or indirect costs to regulated businesses or the public.

The Division does not anticipate any long term effects, either adverse or beneficial, on regulated businesses or the public as a result of these regulations. There will be no direct or indirect costs to the regulated businesses or the public.

**8. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION**

The Division does not anticipate incurring any additional cost to implement these proposed permanent regulations.

**9. DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATIONS 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.

The Division is not aware of any similar regulations of other state or government agencies that which the proposed regulations overlap or duplicate.

10. IF THE REGULATION INCLUDES PROVISIONS WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISIONS.

The Division is not aware of any similar federal regulations of the same activity in which the adopted regulations are more stringent.

11. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.

The proposed regulation does not provide for a new fee or increase an existing fee payable to the Division.

Dated this 19<sup>th</sup> day of July, 2022.

DIVISION OF INDUSTRIAL RELATIONS

By: Victoria Carreón

Victoria Carreón  
Administrator, Division of Industrial Relations  
3360 W. Sahara Ave., Ste. 250  
Las Vegas, Nevada 89102