

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

LCB File No. R215-97

Effective August 19, 1999

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

AUTHORITY: §§1-16, NRS 616B.572 and 616B.578; §17, NRS 616B.572, 616B.575 and 616B.578.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Association” means an association of self-insured public employers or an association of self-insured private employers.*

Sec. 4. *“Board” has the meaning ascribed to it in NRS 616B.563.*

Sec. 5. *“Fund” means the subsequent injury fund for associations of self-insured public or private employers established pursuant to NRS 616B.575.*

Sec. 6. *Service of notice or any other document to a person pursuant to sections 2 to 17, inclusive, of this regulation:*

1. Must be made by personal service or first class mail, unless another form of service is otherwise required pursuant to the provisions of section 11 or 13 of this regulation; and

2. *Shall be deemed to have been made on the date that the notice or other document is personally served to the person or his personal representative or on the date that the notice or other document is mailed, whichever date occurs first.*

Sec. 7. 1. *Except as otherwise provided in section 17 of this regulation, the board will approve or disapprove, in whole or in part:*

(a) *Each claim made against the fund by an association, if the claim 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 that the administrator has verified pursuant to the provisions of NAC 616B.707.*

2. *To submit a claim to the board, an association must:*

(a) *Serve the claim, in writing, to the administrator;*

(b) *Include with the claim a completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist" that is prescribed by the administrator;*

(c) *Organize the claim 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 should be paid from the fund. Such information must include, without limitation, the medical records of the injured employee who is the subject of the claim.*

3. *A copy of form D-37 may be obtained from the administrator at no cost.*

4. *A claim shall be deemed to be complete 15 days after the date that the claim is served to the administrator pursuant to subsection 2, unless the administrator serves notice to the association that the claim is incomplete pursuant to subsection 6.*

5. *A claim is incomplete if the claim:*

(a) *Does not include a completed copy of form D-37;*

(b) *Is not organized in the manner prescribed in form D-37 or contains one or more pages that are not numbered sequentially with all the other pages in the claim; or*

(c) *Does not include information that, in the discretion of the administrator, is necessary for the administrator to make a recommendation to the board pursuant to section 9 of this regulation.*

6. *If a claim is incomplete, the administrator may, not later than 15 days after the date that the claim is served to the administrator pursuant to subsection 2, serve notice, in writing, to the association that the claim is incomplete. Such notice must include a statement that sets forth the deficiencies in the claim. If the administrator serves notice that the claim is incomplete, the administrator may retain the claim or return the claim to the association.*

7. *If the administrator serves notice to the association that a claim is incomplete pursuant to subsection 6, the claim shall not be deemed to be complete until the administrator determines that the association has corrected the deficiencies in the claim. If the association fails to correct the deficiencies in the claim and the claim has not been returned to the association, the administrator may retain the claim or return the claim to the association.*

8. *The provisions of this section do not affect the authority of the administrator to obtain additional information related to the claim from the association or any other source after the claim is deemed to be complete.*

Sec. 8. Upon the request of the administrator, an association that serves a claim to the administrator pursuant to section 7 of this regulation 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. 9. 1. Not later than 30 days after the date that a claim is deemed to be complete pursuant to section 7 of this regulation, the administrator shall serve, in writing, to the board and the association who submitted the claim the recommendation of the administrator concerning his approval or disapproval of the claim and any expenses of the association related to the claim that the administrator has verified pursuant to the provisions of NAC 616B.707.

2. The administrator shall include with his recommendation:

(a) A statement of the issues of fact and law upon which the administrator bases his recommendation;

(b) A copy of each document that was served to or obtained by the administrator pursuant to sections 7 and 8 of this regulation and upon which the administrator bases his recommendation; and

(c) A list of each witness, if any, whom the administrator would likely call before the board to support his recommendation, if contested, and a brief summary of the proposed testimony of each such witness.

Sec. 10. 1. An association may contest all or part of a recommendation of the administrator made pursuant to section 9 of this regulation by requesting a hearing before the board.

2. An association that wishes to request a hearing before the board pursuant to subsection 1 must serve the request, in writing, to the legal counsel of the board not later than 10 days after the date that the recommendation of the administrator is served to the association.

3. The board will conduct the hearing pursuant to the provisions of sections 12 and 13 of this regulation.

Sec. 11. *1. Except as otherwise provided in subsection 2, if an association does not timely request a hearing before the board to contest the recommendation of the administrator pursuant to section 10 of this regulation:*

(a) The board, at a regularly scheduled meeting, will approve or disapprove, in whole or in part, the recommendation of the administrator without allowing additional evidence, testimony, argument or rebuttal to be presented by the association; and

(b) The board will serve notice of its decision to the association by personal service or certified mail, return receipt requested, as soon as practicable.

2. If an association does not timely request a hearing before the board to contest the recommendation of the administrator pursuant to section 10 of this regulation and the board disapproves, in whole or in part, the recommendation of the administrator, the association may request a hearing before the board for reconsideration of only that portion of the decision of the board which disapproved the recommendation of the administrator.

3. An association that wishes to request a hearing before the board pursuant to subsection 2 must serve the request, in writing, to the legal counsel of the board not later than 10 days after the date that the decision of the board is served to the association.

4. The board will conduct the hearing pursuant to the provisions of sections 12 and 13 of this regulation.

Sec. 12. 1. *If an association timely requests a hearing before the board pursuant to section 10 or 11 of this regulation:*

(a) The board will conduct a hearing not later than 35 days after the date that the request for a hearing is served by the association, unless the chairman of the board grants a continuance upon his own motion or, for good cause shown, upon the request of the administrator or the association. To request a continuance, the administrator or the association must serve the request, in writing, to the legal counsel of the board and the other party not later than 5 days before the date of the hearing.

(b) The chairman of the board shall serve notice of the date, location and time of the hearing to 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 to the administrator 2 copies of the prehearing statement described in subsection 2; and

(2) Serve to the legal counsel of the board 6 copies of the prehearing statement described in subsection 2. The copies of the prehearing statement served to the legal counsel of the board must be redacted to remove any information that may identify the injured employee who is the subject of the claim. The redacted information must include, without limitation, 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 copy of each document which was served to or obtained by the administrator pursuant to sections 7 and 8 of this regulation and which the association intends to introduce at the hearing;

(c) A list 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) An estimate of the time that the association will need to present its evidence, testimony, argument and rebuttal at the hearing; and

(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.

Sec. 13. 1. *The board will conduct a hearing that is requested pursuant to section 10 or 11 of this regulation 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 sections 2 to 17, inclusive, of this regulation, the board will conduct the hearing pursuant to the provisions of chapter 233B of NRS that relate to contested cases and, if practicable, the board will apply the rules of procedure and evidence that apply to the district courts of this state.

3. Any objection to the conduct of the hearing, including, without limitation, an objection to the introduction of evidence, must be addressed to the chairman 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 chairman 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 association requested in its prehearing statement that the board provide a court reporter for the hearing. 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:

(a) If the association is contesting the recommendation of the administrator pursuant to section 10 of this regulation, approve or disapprove, in whole or in part, the recommendation of the administrator; or

(b) If the association is seeking reconsideration of a previous decision pursuant to section 11 of this regulation, affirm or amend, in whole or in part, the previous decision.

6. The board will 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. The chairman of the board will sign the decision of the board. The board will serve its decision to the association by personal service or certified mail, return receipt requested.

7. Not later than 10 days after the date that the decision of the board is served to the association, the association may serve to the legal counsel of the board written objections to the decision of the board. Any such written objections that are timely served to the legal counsel of the board must be included in the record.

Sec. 14. *An association that requests a hearing before the board pursuant to section 10 or 11 of this regulation 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. 15. *At any meeting or hearing conducted by the board:*

- 1. The administrator and the board may be represented by legal counsel; and*
- 2. An association that is authorized to appear before the board may be represented by a representative of its choice, but the association remains the real party in interest during all proceedings.*

Sec. 16. *A member of the board may withdraw from participating in a proceeding before the board whenever the member considers himself to be disqualified.*

Sec. 17. *If an association fails to pay any portion of an assessment or penalty which is related to administration of the fund and which has been assessed against the association pursuant to the provisions of this chapter, the association may not submit a claim to the board, have a claim considered by the board or receive payment for any claim that has been approved by the board until the association pays the unpaid assessment or penalty in full.*