

STATE OF NEVADA
BOARD FOR THE ADMINISTRATION
OF THE SUBSEQUENT INJURY FUND FOR
ASSOCIATIONS OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS

IN THE MATTER OF THE ADOPTION)
OF REGULAITONS CONCERNING THE) SIF/ASE 98-1
SUBMISSION OF CLAIMS TO THE BOARD)
FOR THE ADMINISTRATION OF THE) LCB File No. R215-97.....
SUBSEQUENT INJURY FUND FOR)
ASSOCIATIONS OF SELF-INSURED)
PUBLIC OR PRIVATE EMPLOYERS)

PROPOSED PERMANENT REGULATIONS

AUTHORITY: NRS 616b.572; 616b.578

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 18, inclusive, of this regulation.

Sec. 2. As used in sections 10 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive have the meanings ascribed to them in those sections.

Sec. 3. “Administrator” means the administrator of the Division of Industrial Relations of the Department of Business and Industry.

Sec. 4. “Association of self-insured private employers” means a nonprofit, unincorporated association composed of five or more private employers that have been issued a certificate by the commissioner of insurance and is subject to the provisions of NRS 616B.350 to 616B.446, inclusive.

Sec. 5. “Association of self-insured public employers” means a nonprofit, unincorporated association composed of five or more public employers that has been issued a certificate by the commissioner of insurance and is subject to the provisions of NRS 616B.350 to 616B.446, inclusive.

Sec. 6. “Association” means an association of self-insured private employers or an association of self-insured public employers, individually.

Sec. 7. “Associations” means the associations of self-insured private employers and the associations of self-insured public employers, collectively.

Sec. 8. “Board” means the board for the administration of the subsequent injury fund for associations of self-insured public or private employers.

Sec. 9. “Division” means the division of industrial relations of the department of business and industry.

Sec. 10. 1. A claim against the subsequent injury fund for associations of self-insured public or private employers established pursuant to NRS 616B.563 must be

submitted in writing to the administrator and be accompanied by a non-refundable filing fee, payable to the administrator, in the amount of \$300.

2. An association which submits a claim pursuant to subsection 1 shall include with the claim:

(a) The information necessary to establish that the claim should be paid from the subsequent injury fund for associations of self-insured public or private employers, including the medical records of the injured employee who is the subject of the claim; and

(b) A completed copy of the form entitled "D-37, Insurer's Subsequent Injury Checklist" which is prescribed by the administrator. A copy of the form may be obtained from the administrator at no cost.

3. A claim submitted to the administrator pursuant to subsection 1 must contain pages that are sequentially numbered and be organized in the manner prescribed in Form D-37, Insurer's Subsequent Injury checklist.

4. A claim that is not submitted with a completed copy of Form D-37, does not contain pages that are sequentially number, or lacks information which, in the discretion of the administrator, is necessary for the administrator to make a recommendation, is incomplete and may be returned to the association. The claim shall be deemed complete 15 from receipt unless the administrator gives serves the association with notice that it is incomplete prior to the expiration of the 15 day period. The notice must state the reason or reasons why the administrator has determined that the claim is incomplete.

5. An association which submits a claim pursuant to subsection 1 shall, upon the request of the administrator:

(a) Allow the administrator to inspect the records maintained by the association, or the association's third-party administrator, concerning the claim; or

(b) provide copies of those records to the administrator.

Sec. 11. 1. Within 30 days after a claim is deemed complete, the administrator shall serve upon the board, and the association who submitted the claim, his recommendation concerning the approval or disapproval of the claim and any expenses related to the claim.

2. The recommendation shall include:

a. A statement of the issued of fact and law on which the administrator bases his recommendation;

b. A list of the witnesses and a brief summary of the proposed testimony of each witness, if any; and

c. Copies of all documents contained in the claim for reimbursement submitted pursuant to Section 10 of this regulation on which the administrator bases his recommendation.

Sec. 12. Unless otherwise provided by this regulation, service must be made by first class mail or personal service. Service is complete when the document is mailed or, if personally served on the person or his representative, upon receipt.

Sec. 13. 1. An association which has submitted a claim which has been deemed complete may contest all or any part of the administrator's recommendation by requesting a hearing before the board.

2. The request for hearing must be made by serving a written request on the board's counsel and the administrator within 10 days of service of the administrator's recommendation.

3. An association which chooses to contest all or any part of the administrator's recommendation must file a prehearing statement no later than 14 days prior to the hearing. The association shall file 6 copies of the prehearing statement filed with counsel for the board must be redacted to remove any information which would identify the injured employee upon which the claim is based, including, but not limited to, name, address, birth date and social security number. At the same time the association shall also file 2 copies of the prehearing statement with the administrator which have not been redacted.

4. The prehearing statement must include:

a. A statement of the issues of fact and law on which the association bases its contest of the administrator's recommendation;

b. A list of the witnesses and a brief summary of the proposed testimony of each witness; and

c. Copies of all documents contained in the completed claim for reimbursement submitted pursuant to Section 10 of this regulation that the association plans to introduce at the hearing.

d. An estimate of the length of time required by the association to present testimony, evidence and argument, including rebuttal, respecting its contest of the administrator's recommendation; and

e. A request that the board provide a court reporter for the hearing and a statement that the association will pay all costs associated with the court reporter's services, including payment for an original transcript for the board.

5. The board will hold a hearing within 45 days after the request for a hearing is served unless the chairman of the board grants a continuance. The administrator or the association who submitted the claim must serve a request for continuance upon the board's legal counsel and the other party no later than 5 days prior to the hearing. The chairman of the board may grant a continuance for good cause shown.

6. The chairman of the board will serve the administrator and the association with a notice of the time, date and location of the hearing as soon as practicable, but no later than 10 days prior to the hearing.

Sec. 14. 1. The board will conduct a fair and impartial hearing to assure that the facts are fully elicited to adjudicate all issues and avoid delay.

2. Hearings before the board must be in accordance with the Nevada Administrative Procedure Act, chapter 233B of NRS, and if practicable, be governed by the rules of evidence and procedure applicable in the district courts of this state.

3. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence shall be addressed to the chairman of the board who will, in consultation with the board and board's legal counsel, rule upon the admissibility of evidence. Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof to the chairman of the board. The offer of proof must be included in the record.

4. An audio recording of the hearing will be made unless the association requests that the board provide a court reporter in its prehearing statement. If the board provides a

court reporter, the association must pay all costs associated with court reporter's services, including payment for an original transcript for the board. If a court reporter is not requested, the association may request that the audio recording be transcribed. If the association requests that the audio recording be transcribed, the association must pay all costs associated with the transcription, including payment of a transcript for the board.

Sec. 15. If the association which submitted the claim fails to serve a request for a hearing on the board's legal counsel, the board may approve or disapprove the administrator's recommendation in whole or in part.

Sec. 16. 1. If, after conducting a hearing pursuant to section 5 of this regulation, the board approves or disapproves the administrator's recommendation, in whole or in part, the board will direct the legal counsel for the board to prepare a written decision which includes findings of fact and conclusions of law which incorporates the approval or disapproval of the administrator's recommendation and any expenses related to the claim. The decision will be signed by the chairman of the board and served upon the association by certified mail, return receipt requested, or personal service.

2. The association may, within 10 days after service of the decision, serve the board's legal counsel with objections to the decision. The objections must be included in the record.

Sec. 17. The administrator and the board may be represented by legal counsel at a meeting or hearing conducted by the board. An association may be represented before the board by a representative of his choice, but the association is the real party in interest in any meeting or hearing conducted by the board.

Sec. 18. A member of the board may withdraw from a proceeding whenever he considers himself to be disqualified.