

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R098-98

July 16, 1998

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

AUTHORITY: §§2 and 3, NRS 616A.400, §4, NRS 616A.400 and 616C.065, §§5-8, NRS 616A.400, §§9 and 10, NRS 616A.400 and 616A.417, §§11-17, NRS 616A.400, §18, NRS 616A.400 and 616A.417, §§19-29, NRS 616A.400, §§30 and 31, NRS 616A.400 and 616A.417, §§32-35, NRS 616A.400, §36, NRS 616A.400 and 616A.417, §§37-53, NRS 616A.400.

Section 1. Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *The administrator will interpret:*

1. *“Employer,” as used in NRS 616C.140, to include, without limitation, a former employer of an injured employee that is found liable for payment of a claim for compensation filed by the injured employee.*

2. *“Notified,” as used in NRS 616C.065, to mean received a claim for compensation pursuant to NRS 616C.020 or 616C.040.*

Sec. 3. *To determine whether an insurer has unreasonably delayed or refused to pay a claim for compensation for the purposes of subsection 2 of NRS 616C.065, the administrator will consider:*

1. *The reasons set forth by the insurer for making payment after the time specified in subsection 1 of NRS 616C.065 or for refusing to make payment;*

2. *The efforts made by the insurer to make payment within the time specified in subsection 1 of NRS 616C.065;*

3. *The date on which payment was actually made by the insurer; and*

4. *Any other circumstance that the administrator deems relevant to determine whether a delay in or refusal to make payment was unreasonable.*

Sec. 4. *The provisions of sections 5 to 8, inclusive, of this regulation, do not apply to an evaluation performed pursuant to NRS 616C.490.*

Sec. 5. 1. *If an insurer or employer requests that an injured employee who has filed a claim for compensation submit to a medical examination pursuant to NRS 616C.140, the insurer or employer shall notify the injured employee, in writing, of the time and place of the medical examination:*

(a) *At least 10 days before the date of the medical examination, if the employee resides within this state; or*

(b) *At least 15 days before the date of the medical examination, if the employee resides outside this state.*

2. *An insurer that requests an injured employee to submit to a medical examination pursuant to NRS 616C.140 shall provide a copy of the written notification required pursuant to subsection 1 to the employer of the injured employee at the same time at which written notification is provided to the injured employee.*

3. *An employer that requests an injured employee to submit to a medical examination pursuant to NRS 616C.140 shall provide a copy of the written notification required pursuant to subsection 1 to the insurer of the employer at the same time at which written notification is provided to the injured employee.*

Sec. 6. 1. *An insurer that requests an injured employee to submit to a medical examination pursuant to NRS 616C.140 shall provide a copy of the report of the medical examination to the injured employee and his employer within 10 days after receipt of the report.*

2. *An employer that requests an injured employee to submit to a medical examination pursuant to NRS 616C.140 shall provide a copy of the report of the medical examination to the injured employee and the insurer of the employer within 10 days after receipt of the report.*

Sec. 7. *An insurer or employer that requests an injured employee to submit to a medical examination pursuant to NRS 616C.140 shall:*

1. *If the medical examination is conducted within this state, pay the charges in the manner set forth in NRS 616C.135; or*

2. *If the medical examination is conducted outside this state, pay:*

(a) *The usual and customary rate charged by the person performing the medical examination; or*

(b) *The charge upon which the person performing the medical examination and the employer have agreed, whichever is less.*

Sec. 8. *An insurer or employer that requests an injured employee to submit to a medical examination pursuant to NRS 616C.140 shall include with the notification required pursuant to subsection 1 of section 5 of this regulation payment for the travel costs of the injured employee in accordance with the following:*

1. The insurer or employer shall pay for the cost of transportation incurred by the injured employee if the injured employee is required to travel 20 miles or more, one way, from:

(a) His residence to the place of the medical examination; or

(b) His place of employment to the place at which the medical examination will be conducted if the injured employee is required to be examined during his normal working hours.

2. Except as otherwise provided in this section, payment for the cost of transportation must be computed at a rate equal to:

(a) The mileage allowance for state employees who use their personal vehicles for the convenience of this state; or

(b) The expense actually incurred by the injured employee for transportation, if the injured employee consents to payment at this rate and the expense is not greater than the amount to which the injured employee would otherwise be entitled pursuant to paragraph (a).

3. Except as otherwise provided in this section, if the injured employee must travel before 7:00 a.m., between 11:30 a.m. and 1:30 p.m., or cannot return to his residence or place of employment until after 7:00 p.m., or any combination thereof, the insurer or employer shall pay the injured employee for any meals required to be purchased at a rate equal to:

(a) The rate allowed for state employees; or

(b) The expense actually incurred by the injured employee for meals, if the injured employee consents to payment at this rate and the expense is not greater than the amount to which the injured employee would otherwise be entitled pursuant to paragraph (a).

4. The insurer or employer shall pay an injured employee for his expenses of travel if the injured employee is required to travel 50 miles or more, one way, from his residence or place of employment and is required to remain away from his residence or place of employment overnight. Payment for such expenses must be computed at a rate equal to:

(a) The per diem allowance authorized for state employees; or

(b) The expenses actually incurred by the injured employee,

whichever is less.

5. If the injured employee receives the prior approval of the insurer or employer requesting the medical examination, the injured employee may be paid for air fare if the time, distance, convenience or cost justifies his travel by air.

6. If the injured employee moves outside this state or to a new location within this state for his own convenience after filing a claim for compensation, the maximum mileage for one direction for which the injured employee may be paid is the mileage allowable before the move or 40 miles, whichever is greater.

7. No payment is allowed for a person traveling with an injured employee unless there is a medical necessity that precludes the injured employee from traveling alone. The medical necessity must be substantiated in writing by the treating physician or chiropractor of the injured employee.

Sec. 9. *1. If an insurer receives a claim for compensation from an injured employee and determines that the employer named in the claim for compensation is not an employer to whom the insurer provides coverage, the insurer shall, within 1 working day after making such a determination:*

(a) Deliver by electronic transmission or other method a copy of the claim for compensation to the administrator; and

(b) Notify:

(1) The employer named on the claim for compensation;

(2) The injured employee; and

(3) The provider of health services.

2. If the insurer fails to notify the administrator as required by subsection 1 or notifies the administrator in an untimely manner, the administrator will, after notice and hearing:

(a) For the first violation within a 12-month period, issue a notice of correction pursuant to paragraph (a) of subsection 2 of NRS 616D.120.

(b) For the second violation within a 12-month period, impose an administrative fine of not less than \$100.

(c) For the third violation within a 12-month period, impose an administrative fine of not less than \$250.

(d) For the fourth violation within a 12-month period, impose an administrative fine of not less than \$500.

(e) For the fifth and each subsequent violation within a 12-month period, impose an administrative fine of \$1,000.

Sec. 10. *After receipt of a copy of a claim for compensation pursuant to subsection 1 of section 9 of this regulation, the administrator or his designated agent will:*

1. If the employer is insured by another insurer, within 10 working days after receipt of the notification:

(a) Deliver by electronic transmission or other method a copy of the claim for compensation to the other insurer;

(b) Notify the injured employee and the provider of health services of the name of the other insurer; and

(c) Deliver by electronic transmission or other method a copy of the claim for compensation to the employer with directions requiring the employer to file the claim for compensation with the other insurer.

2. If the employer is uninsured, deliver by electronic transmission or other method the claim for compensation to the system within 30 working days after receipt of the notification.

Sec. 11. *An insurer shall notify the administrator at least 60 days before ceasing to provide workers' compensation coverage in this state. The notification must include, without limitation, the name, business address and physical location of the person who will assume responsibility for the open and closed claims of the insurer after the insurer ceases providing workers' compensation coverage in this state.*

Sec. 12. NAC 616C.040 is hereby amended to read as follows:

616C.040 The provisions of NAC 616C.040 to 616C.055, inclusive, apply to all employers who elect *and have been approved by the administrator* to provide accident benefits for their employees pursuant to NRS 616C.265.

Sec. 13. NAC 616C.043 is hereby amended to read as follows:

616C.043 An employer who makes arrangements to provide accident benefits [**must:**]
shall:

1. Have adequate resources to ensure payment of accident benefits during any period of adverse loss experience;
2. Ensure that each employee is guaranteed *and notified in writing of* the right to select his own physician or chiropractor for treatment [;] *pursuant to NRS 616C.090;* and
3. Provide for payment of incurred losses of uninsured sole proprietors and subcontractors pursuant to chapters 616A to 617, inclusive, of NRS.

Sec. 14. NAC 616C.046 is hereby amended to read as follows:

616C.046 1. [**Any**] *An* employer who was not providing accident benefits pursuant to NRS 616C.265 on June 30, 1977, must:

- (a) Be a corporation having a net worth of at least \$2,500,000; or
- (b) Be an entity of the state or its political subdivisions with an annual operating budget in excess of \$5,000,000,

and must have paid [**workmen's compensation**] premiums *for workers' compensation* to the system *or a private carrier* of not less than \$50,000 per year for each of the preceding 2 years [**to obtain**] *before the employer may seek* approval *from the administrator* of arrangements to provide accident benefits.

2. [**Every**] *A* corporate employer who elects *and is approved by the administrator* to provide accident benefits for his employees shall file with the [**chief**] *administrator* an annual,

audited financial report of the corporation and such other financial information as may be required to establish the financial responsibility necessary to provide accident benefits.

Sec. 15. NAC 616C.049 is hereby amended to read as follows:

616C.049 1. The [~~manager shall establish in the state insurance fund,~~] *administrator will establish* a contingency reserve account against the insolvency of employers who have made arrangements to provide accident benefits. This contingency reserve account is called the insolvency reserve account.

2. The insolvency reserve account must be funded by a surcharge on the ex medical premium rates [~~.~~] *received by the system and private carriers*. The surcharge must not exceed 10 percent of the rates in the manual.

3. No surcharge may be added to ex medical rates in the manual when the balance in the insolvency reserve account exceeds [~~\$500,000~~].

4. ~~The insolvency reserve account will be credited annually with the current average book yield on the system's invested assets as determined at the close of the fiscal year. Interest must be credited on the average reserve account balance.~~ *\$2,500,000*.

Sec. 16. NAC 616C.052 is hereby amended to read as follows:

616C.052 An [~~employer's~~] arrangement *by an employer* to provide accident benefits must include [~~:~~] *, without limitation:*

1. Written instructions to his employees specifying procedures to be followed for the payment of accident benefits to injured employees or employees with occupational diseases;

2. *A written notification to his employees that the employees are not required to accept the services of a physician or chiropractor provided by the employer and may seek professional medical services from providers that the employees choose pursuant to NRS 616C.090;*

3. A written explanation or a copy of instructions covering the procedures to be followed in determining the amount of fees charged by providers of medical care to be reimbursed by the employer;

[3.] 4. Identification of the offices or locations in [Nevada] *this state* which are responsible for the administration and payment of accident benefits;

[4.] 5. A copy of any contract between the employer and [any] *a* provider of medical or hospital services; and

[5.] 6. A written statement in which the employer, as a condition precedent, agrees to assume liability for the costs of transporting an injured employee to the nearest place of proper treatment and for the costs of administering first aid to the employee while [he] *the employee* is being transported.

Sec. 17. NAC 616C.055 is hereby amended to read as follows:

616C.055 1. Each employer who elects to provide accident benefits pursuant to NRS 616C.265 shall submit the following reports for all injuries:

(a) An employer's report of an industrial injury, on a form approved by the [chief.] *administrator*. This report is due within 6 working days after the date of notice of the injury or the occupational disease.

(b) An employee's claim for compensation and a physician's or chiropractor's report of initial treatment, on a form approved by the [chief.] *administrator*. This report is due within 5 days after initial treatment.

(c) Upon request, copies of all bills from providers of medical care itemizing the services rendered.

2. The following reports must be submitted upon request:

(a) A copy of the physician's operative report covering surgery performed.

(b) Copies of all reports of medical consultation requested by the treating physician [, *chiropractor,*] *or chiropractor or the* employer.

(c) A copy of the hospital's report of the employee's discharge.

3. The following reports are required on a scheduled basis:

(a) A monthly report prepared by the treating physician or chiropractor during the period of disability. The report must contain a narrative summary of the [claimant's condition,] *condition of the injured employee*, his progress, and the physician's or chiropractor's plan of future treatment and prognosis. The report is due on or before the 10th day of each month following the month in which the treatment or evaluation is rendered.

(b) Annually, on July 1, a copy of the current document which advises the employee of his rights to accident benefits as a result of industrial injury or occupational disease and the procedures which he is to follow to obtain those accident benefits.

4. The employer shall submit all reports required by this section to the [chief and the system.] *administrator and the insurer of the employer*.

5. All determinations regarding compensation must be made by the insurer.

Sec. 18. NAC 616C.073 is hereby amended to read as follows:

616C.073 1. A claim *for compensation* must be printed or typed, properly titled, [and] signed *and dated* by the person filing the claim or his attorney or other representative. *A claim for compensation that is filed by electronic transmission must be signed with an electronic symbol representing the signature of the person submitting the claim that is:*

(a) *Unique to the person who uses it as a signature;*

(b) *Capable of verification; and*

(c) *Linked to data in such a manner that the signature is invalidated if the data is altered.*

2. A [claim] *report of injury* must be submitted on a form *prescribed by the administrator and* provided by the insurer [and must state] *or third-party administrator. The form must set forth* the name and address of the injured employee and the time, place, nature [,] and cause of his injury. *If the employer files the report of injury by electronic transmission, the employer must retain the original report for 3 years, unless, pursuant to NRS 616C.045, the insurer or third-party administrator requests the employer return by mail the report that contains the original signature of the employer or his designee.*

3. The original of each claim *for compensation that is filed by electronic transmission* must be [filed with the insurer.] *retained by the treating physician or chiropractor for 3 years, unless, pursuant to NRS 616C.040, the insurer or third-party administrator requests the treating physician or chiropractor return by mail the claim for compensation that contains the original signatures of the injured employee and the physician or chiropractor.*

4. If the injury or occupational disease will result in the [claimant] *injured employee* losing time from work and the [claimant] *injured employee* has been reporting his income from tips,

the employer shall submit the amount of tips declared on Form D-23, which must be included in calculating the average monthly wage of the [claimant] *injured employee* pursuant to NRS 616B.227.

Sec. 19. NAC 616C.079 is hereby amended to read as follows:

616C.079 [A claimant] *An injured employee* must sign all medical releases necessary for the insurer to obtain appropriate information and documentation to determine the nature and amount of benefits to which he is entitled. If [a claimant] *the injured employee* fails to do so, the insurer may withhold compensation from him.

Sec. 20. NAC 616C.085 is hereby amended to read as follows:

616C.085 Each insurer shall maintain a log of claims. The log must contain the following information:

1. The name of the [claimant.] *injured employee*.
2. The date on which the alleged injury occurred or disease was reported to the employer.
3. A brief description of the alleged accident and injury of occupational disease, including , *without limitation*, a statement as to the type of any benefits paid.
4. An entry to indicate whether the claim has been denied.

Sec. 21. NAC 616C.088 is hereby amended to read as follows:

616C.088 1. An insurer shall maintain a file of employees' claims concerning industrial injuries and occupational disease, including , *without limitation*, claims which have been denied. The file must be indexed by [claimants'] *the* names and social security numbers [.] *of the injured employees*.

2. The file for each industrial injury or occupational disease must contain:

(a) The employer's report of the industrial injury or occupational disease.

(b) The claim for compensation and any medical report associated with that claim that is issued after the claim is filed with the insurer.

(c) All:

(1) Applications for a stay concerning a decision on a claim for compensation made to a hearing officer, appeals officer or a court of competent jurisdiction;

(2) Written orders or decisions on a claim for compensation entered by a hearings officer, appeals officer or a court of competent jurisdiction;

(3) Written determinations made by an insurer, third-party administrator or an organization for managed care concerning a claim for compensation;

(4) Written settlement agreements or stipulations made between the [claimant] *injured employee* and his employer or the insurer of the employer concerning a claim for compensation; and

(5) Except as otherwise provided in subparagraph (2) of paragraph (f) of subsection 2, other documents which affect the amount, timing or denial of the payment of compensation. As used in this paragraph, "payment of compensation" has the meaning ascribed to it in subsection 2 of NAC 616D.305.

(d) A record of all compensation paid to the [claimant,] *the injured employee* and all payments made to any other person in connection with the claim, for:

(1) Accident benefits;

(2) Temporary partial disability;

(3) Temporary total disability;

- (4) Permanent partial disability;
- (5) Permanent total disability;
- (6) Death benefits; and
- (7) Vocational rehabilitation,

and the amount of the expected total incurred costs and the justification.

(e) A copy of any notice of termination of benefits which has been sent to the [claimant.] *injured employee.*

(f) Copies of all correspondence and other documents pertaining to the claim, including , *without limitation*, copies of:

(1) All medical bills incurred by the [claimant] *injured employee* and received by the insurer; and

(2) Any notices sent to the [claimant] *injured employee* to inform him of his right to a review or appeal,

but not including records of any privileged communication between the insurer and its attorney or of any investigation conducted by or on behalf of the insurer concerning a possible violation of NRS 616D.300.

(g) All ratings performed by any physician or chiropractor.

(h) A summary of conversations or oral negotiations, or both, conducted by the insurer with the [claimant, the claimant's attorney,] *injured employee, the legal counsel who represents the injured employee* or any other party other than the [claimant's] physician or chiropractor [,] *of the injured employee*, if action is requested or taken.

(i) After the claim is closed, the log of oral communications relating to the medical disposition of a claim that must be maintained by an insurer pursuant to NRS 616D.330.

3. Each file of a claim must be retained for 2 years after the death of the **[claimant.]** *injured employee.*

Sec. 22. NAC 616C.091 is hereby amended to read as follows:

616C.091 After receipt of a claim for compensation, the insurer shall give written notice of its determination to accept or deny the claim to the injured employee or his dependents and, if his employer is not self-insured, to his employer. The notice must be given within the time prescribed in NRS 616C.060. If the insurer denies the claim:

1. The notice must include:

(a) A written statement of the right to request a hearing on the matter before a hearing officer and a form for requesting a hearing.

(b) The reasons for the denial.

2. The insurer shall provide a copy of the notice to the injured employee's treating physician or chiropractor.

3. The insurer shall notify the administrator of the denial by delivering by electronic transmission or mailing a copy of the determination to the administrator within 30 days after the denial.

Sec. 23. NAC 616C.115 is hereby amended to read as follows:

616C.115 The insurer shall pay all the expenses of any investigation, including , *without limitation*, the cost of travel and medical examinations, authorized by it to obtain a full and

complete record of the cause, scope [,] and origin of a claim and the physical condition of the [claimant.] *injured employee*

Sec. 24. NAC 616C.270 is hereby amended to read as follows:

616C.270 [Any claimant] *An injured employee* who is aggrieved by any final determination of the insurer or the [insurer's] staff *of the insurer* may appeal from the decision to a hearing officer.

Sec. 25. NAC 616C.273 is hereby amended to read as follows:

616C.273 If an insurer suspends benefits pursuant to NRS 616C.140 or 616C.230, the insurer shall provide the [claimant] *injured employee* with a written explanation of his right to an appeal and the procedures [he] *that the injured employee* must follow to have his benefits reinstated.

Sec. 26. NAC 616C.274 is hereby amended to read as follows:

616C.274 1. A request for a hearing before a hearing officer or a notice of appeal filed with the hearings division of the department of administration must be filed:

(a) On a form provided by an insurer, an organization for managed care [,] or the hearings division; or

(b) On a similar form approved by the department of administration.

2. An insurer or the third-party administrator for an insurer shall provide the following information on each form used to request a hearing:

(a) The name and last known mailing address of the [claimant;] *injured employee;*

(b) The name under which the employer was doing business at the time of the injury and the last known mailing address and telephone number of the employer;

- (c) If the insurer is a self-insured employer:
 - (1) The name, address [.] and telephone number of the self-insured employer; and
 - (2) The name, address, and telephone number of the third-party administrator of the self-insured employer, if any;
- (d) The number of the claim;
- (e) The date of injury; and
- (f) If the request is for a hearing before a hearing officer, a copy of the letter of determination of the insurer or, if such a copy is unavailable, the date of the determination of the insurer and the issues stated in the determination.

Sec. 27. NAC 616C.275 is hereby amended to read as follows:

616C.275 1. Parties to a contested claim who wish to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer must:

- (a) If a request for a hearing before a hearing officer has been filed, submit to the hearing officer a written stipulation to forego the hearing before the hearing officer.
- (b) If a request for a hearing before a hearing officer has not been filed, submit to a hearing officer a request for a hearing and a written stipulation to forego the hearing before the hearing officer.

2. The written stipulation required by subsection 1 must be:

- (a) Filed with the hearing officer no later than 10 days before the scheduled hearing; and
- (b) Signed by:
 - (1) The [claimant's] legal counsel [;] *of the injured employee;*
 - (2) The insurer; and

(3) The employer, if the employer has notified the parties or the hearings division of the department of administration that he will participate in the contested claim.

3. If a contested claim is submitted directly to an appeals officer pursuant to a written stipulation of the [claimant] *injured employee* and insurer and the employer objects thereto, the employer must file with the appeals officer a written objection to the stipulation within 15 days after receipt of the order submitting the contested claim to the appeals officer. The appeals officer shall rule on the objection within 10 days after receipt of the objection. If the appeals officer determines that the submission of the contested claim directly to an appeals officer is not appropriate, he shall remand the contested claim to a hearing officer. If the appeals officer determines that the submission of the contested claim directly to an appeals officer is appropriate, he shall schedule a hearing pursuant to subsection 4 of NRS 616C.345.

Sec. 28. NAC 616C.300 is hereby amended to read as follows:

616C.300 1. The insurer shall, within 30 days after notice of hearing before an appeals officer or, if a prehearing conference is scheduled in the matter, on or before the date of the conference, copy all documents in the [claimant's] file *of the injured employee* relating to the matter on appeal and serve the copies, appropriately indexed, upon the appeals officer and all other parties.

2. The insurer shall, within 2 days before a hearing before a hearing officer, submit the following documents, appropriately numbered and indexed, to the hearings division of the department of administration:

(a) Copies of forms C-3 and C-4 or any similar forms which have been provided to the insurer pursuant to NAC 616A.480;

(b) A brief statement of the reason for the determination by the insurer; and

(c) Copies of any other documents in the [claimant's] file *of the injured employee* relating to the matter before the hearing officer.

3. If an insurer receives a request from another party to a dispute before a hearing officer at least 10 days before the hearing, the insurer shall provide to that party, at least 2 days before the hearing, a copy of all documents to be submitted to the hearing officer.

4. Any other party to a dispute who submits documents to a hearing officer shall provide copies of the documents to the insurer at the time of the hearing.

Sec. 29. NAC 616C.333 is hereby amended to read as follows:

616C.333 1. [A claimant] *An injured employee* requesting reimbursement for expenses incurred for attendance at a hearing shall complete the form entitled "Request for Reimbursement of Expenses for Travel and Lost Wages" and submit it to the insurer.

2. The insurer may require:

(a) The [claimant] *injured employee* to submit receipts for food and lodging; and

(b) The employer to submit verification of the [claimant's wages.] *wages of the injured employee.*

Sec. 30. NAC 616C.390 is hereby amended to read as follows:

616C.390 1. [Within 24 hours] *By the end of the next working day* after receiving information that an employer has failed to obtain or maintain coverage required by chapters 616A to 617, inclusive, of NRS, the system shall notify the [chief] *administrator* and furnish copies of documents indicating the name [and location of] *under which* the uninsured employer [.] *was doing business, the business address, physical address and telephone number of the*

uninsured employer and, if applicable, the risk classifications, history of coverage and estimated annual premiums to be paid by the uninsured employer and the date on which the uninsured employer's insurance was canceled.

2. If the system rescinds a notice of termination [.] *by reopening the employer's account or reinstating the employer's coverage*, the system shall notify the [industrial insurance regulation section immediately by telephone. Written confirmation must be submitted within 3 days.] *administrator, in writing, by facsimile or electronic transmission by the end of the next working day after the date of rescission. The written notification must include, without limitation, the name, business address and policy number of the employer, the date on which the employer's insurance was canceled, the date on which the employer's insurance was reopened or reinstated, the total annual premiums to be paid by the employer and any other charges assessed against the employer.*

3. *If a policy is canceled for a reason other than the nonpayment of a premium, the system shall notify the administrator of the cancellation within 3 working days after the cancellation.*

Sec. 31. NAC 616C.390 is hereby amended to read as follows:

616C.390 1. By the end of the next working day after receiving information that an employer has failed to obtain or maintain coverage required by chapters 616A to 617, inclusive, of NRS, the system *or private carrier* shall notify the administrator and furnish copies of documents indicating the name under which the uninsured employer was doing business, the business address, physical address and telephone number of the uninsured employer and, if applicable, the risk classifications, history of coverage and estimated annual

premiums to be paid by the uninsured employer and the date on which the uninsured employer's insurance was canceled.

2. If the system rescinds a notice of termination by reopening the employer's account or reinstating the employer's coverage, the system shall notify the administrator, in writing, by facsimile or electronic transmission by the end of the next working day *or within 24 hours* after the date of rescission. The written notification must include, without limitation, the name, business address and policy number of the employer, the date on which the employer's insurance was canceled, the date on which the employer's insurance was reopened or reinstated, the total annual premiums to be paid by the employer and any other charges assessed against the employer.

3. If a policy is canceled for a reason other than the nonpayment of a premium, the system *or a private carrier* shall notify the administrator of the cancellation within 3 working days after the cancellation.

4. If the system or a private carrier fails to properly notify or notifies the administrator in an untimely manner regarding an uninsured employer, or fails to provide or provides the administrator in an untimely manner with the required information regarding the cancellation, reopening or reinstatement of an employer's account or coverage as required pursuant to this section, the administrator will, after notice and hearing:

(a) For the first violation within a 12-month period, issue a notice of correction pursuant to paragraph (a) of subsection 2 of NRS 616D.120.

(b) For the second violation within a 12-month period, impose an administrative fine of not less than \$100.

(c) For the third violation within a 12-month period, impose an administrative fine of not less than \$250.

(d) For the fourth violation within a 12-month period, impose an administrative fine of not less than \$500.

(e) For the fifth and each subsequent violation within a 12-month period, impose an administrative fine of \$1,000.

Sec. 32. NAC 616C.393 is hereby amended to read as follows:

616C.393 1. If the system conducts an investigation regarding a claim against an uninsured employer, a report of its findings must be prepared.

2. Upon completion of the investigation, a copy of all available information from the file, including , *without limitation*, the investigative report, must be sent to the [chief.] *administrator.*

Sec. 33. NAC 616C.393 is hereby amended to read as follows:

616C.393 1. If the system *or a private carrier* conducts an investigation regarding a claim against an uninsured employer, a report of its findings must be prepared.

2. Upon completion of the investigation, a copy of all available information from the file, including, without limitation, the investigative report, must be sent to the administrator.

Sec. 34. NAC 616C.396 is hereby amended to read as follows:

616C.396 1. The industrial insurance regulation section will investigate each claim against an uninsured employer to determine whether the claim will be assigned to the system for the payment of benefits from the uninsured employers' claim fund. The industrial insurance regulation section will refuse to assign the claim if:

(a) The system *or a private carrier* has failed to exhaust its remedies by failing to charge the claim against any existing policies of the employer of the employee or any principal contractor who is liable for the payment of compensation;

(b) The claim includes a person excluded as an employee pursuant to NRS 616A.110;

(c) The notice of the claim fails to include the documents which support the claim; or

(d) The claim fails to satisfy any provision of NRS 616C.220.

2. If the industrial insurance regulation section refuses to assign a claim, it will include in the notice required by NRS 616C.220 a statement of the right of appeal provided by that section.

Sec. 35. NAC 616C.399 is hereby amended to read as follows:

616C.399 1. If a claim against an uninsured employer is assigned by the **[chief]** *administrator* to the system, the system shall bill the division for compensation paid on the claim. *The system shall submit such a bill to the division within 90 days after the date on which the system paid the compensation unless the system shows good cause for later submission. If good cause is shown, the system shall submit such a bill not later than 6 months after the date on which the system paid the compensation.* The system shall present with any billing copies of invoices, benefit checks, change orders, journal entries **[.]** and employer's claims expense reports to evidence each transaction or payment made on the claim. The division shall promptly reimburse the system for only those billings supported by such evidence.

2. The system shall **[promptly]** reimburse the uninsured employer's fund for **[any repayments or reimbursements]** *a repayment or reimbursement* received by the system **[.]** *within 30 days after receipt of the repayment or reimbursement.*

Sec. 36. NAC 616C.402 is hereby amended to read as follows:

616C.402 1. If a claim against an uninsured employer is closed, the system shall send a copy of *or deliver by electronic transmission* the closure notice to the division [.] *at the same time at which the notice is delivered to the injured employee pursuant to NRS 616C.235.*

2. If a claim against an uninsured employer is reopened, the system shall send a copy of *or deliver by electronic transmission* the reopening notice to the division [**within 5 days after the date of the notice.**] *at the same time at which the notice is delivered to the injured employee.*

3. *If the system fails to comply with subsection 1 or 2 of this section or complies in an untimely manner, the administrator will, after notice and hearing:*

(a) For the first violation within a 12-month period, issue a notice of correction pursuant to paragraph (a) of subsection 2 of NRS 616D.120.

(b) For the second violation within a 12-month period, impose an administrative fine of not less than \$100.

(c) For the third violation within a 12-month period, impose an administrative fine of not less than \$250.

(d) For the fourth violation within a 12-month period, impose an administrative fine of not less than \$500.

(e) For the fifth and each subsequent violation within a 12-month period, impose an administrative fine of \$1,000.

Sec. 37. NAC 616C.405 is hereby amended to read as follows:

616C.405 The [**chief**] *administrator* will:

1. Direct an immediate investigation of each claim of an employee of an uninsured employer which is received.
2. Notify the [claimant] *injured employee and the employer* in writing *of the determination of the administrator on the claim* within 30 days [of] *after* receipt of [his] *the* claim . [of the decision of the chief on the claim.]
3. Deliver copies of accepted claims and the [claimant's] assignment of rights of action *of the injured employee* to the employer.
4. Advise the employer that he will be billed monthly for all expenses incurred in the settlement of accepted claims.
5. Take any action necessary to collect from the uninsured employer the cost incurred in the settlement of accepted claims.

Sec. 38. NAC 616C.420 is hereby amended to read as follows:

616C.420 As used in NAC 616C.423 to 616C.447, inclusive, “average monthly wage” means the total gross value of all money, goods, and services received by [a claimant] *an injured employee* from his employment to compensate him for his time or services and is used as the base for calculating the rate of compensation for the [claimant.] *injured employee.*

Sec. 39. NAC 616C.423 is hereby amended to read as follows:

616C.423 1. Money, goods and services which are paid within the period used to calculate the average monthly wage include, but are not limited to:

- (a) Wages;
- (b) Commissions which are prorated over [6 months;] *the period used to calculate the average monthly wage;*

- (c) Incentive pay;
- (d) Payment for sick leave;
- (e) Bonuses which are prorated over [1 year;]
- (f) Payment at termination;] *the period used to calculate the average monthly wage;*
(f) Termination pay;
- (g) Tips which are collected and disbursed by the employer which are not paid at the discretion of the customer;
- (h) Tips reported by the employee pursuant to NRS 616B.227;
- (i) Allowance for tools or for the rental of hand and power tools not normally provided by the employee;
- (j) Salary;
- (k) Payment for piecework;
- (l) Payment for vacation;
- (m) Payment for holidays;
- (n) Payment for overtime;
- (o) Payment for travel when it is paid to compensate the employee for the time spent in travel; and
- (p) The reasonable market value of either board or room, or both. At least \$150 per month will be allowed for board and room, \$5 per day or \$1.50 per meal for board, and \$50 per month for a room.

2. Notwithstanding paragraph (p) of subsection 1, the reasonable value of a meal furnished by an employer to an employee is the value, if any, specified in the collective bargaining agreement between the employee and employer.

3. The following payments may not be included in the calculation of an average monthly wage:

(a) Reimbursement to the employee for expenses to enable him to perform his job, including , *without limitation*, a per diem allowance and reimbursement for travel expenses;

(b) Payment for employment which is not subject to coverage [under] *pursuant to* chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(c) Payment for employment for which coverage is elective, but has not been elected; and

(d) Allowances for laundry or uniforms.

Sec. 40. NAC 616C.435 is hereby amended to read as follows:

616C.435 1. Except as otherwise provided in this section, a history of earnings for a period of 12 weeks must be used to calculate an average monthly wage.

2. If a 12-week period of earnings is not representative of the [claimant's] average monthly wage [,] *of the injured employee*, earnings over a period of 1 year or the full period of employment, if it is less than 1 year, may be used. Earnings over 1 year or the full period of employment, if it is less than 1 year, must be used if the average monthly wage would be increased.

3. If an *injured* employee is a member of a labor organization and is regularly employed by referrals from the office of that organization, wages earned from all employers for a period of 1 year may be used. A period of 1 year using all the [employee's] wages *of the injured*

employee from all his employers must be used if the average monthly wage would be increased.

4. If information concerning payroll is not available for a period of 12 weeks, wages may be averaged for the available period, but not for a period of less than 4 weeks.

5. If information concerning payroll is unavailable for a period of at least 4 weeks, average earnings must be projected using the rate of pay on the date of the accident or illness and the [employee's] projected working schedule [.] *of the injured employee.*

6. If earnings are based on piecework and a history of earnings is unavailable for a period of at least 4 weeks, the wage must be determined as being equal to the average earnings of other employees doing the same work.

7. If these methods of determining a period of earnings cannot be applied reasonably and fairly, an average monthly wage must be calculated by the insurer at 100 percent of:

(a) The sum which reasonably represents the average monthly wage of the *injured* employee as defined in NAC 616C.420 to 616C.447, inclusive, at the time his injury or illness occurs; or

(b) The hourly wage on the day the injury or illness occurs, calculated by using the projected working schedule.

8. The period used to calculate the average monthly wage must consist of consecutive days, ending on the date on which the accident or disease occurred, or the last day of the payroll period preceding the accident or disease if this period is representative of the average monthly wage.

9. As used in this section, “earnings” means earnings received from the employment in which the injury occurs and in any concurrent employment.

Sec. 41. NAC 616C.438 is hereby amended to read as follows:

616C.438 Each day within a period of earnings must be counted to determine the period of employment, except for days on which an *injured* employee was:

1. Absent because of a certified illness or disability, including , *without limitation*, time for which temporary disability payments were made;

2. Institutionalized in a hospital or other institution;

3. Enrolled as a full-time student and not employed on the days of attendance of school;

4. In military service other than training duty conducted on weekends; **[or]**

5. Absent because of an officially sanctioned strike **[.] ; or**

6. *Absent because of leave approved pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.*

All other days in the period, including , *without limitation*, days while on vacation, will be used to calculate the average monthly wage.

Sec. 42. NAC 616C.447 is hereby amended to read as follows:

616C.447 The average monthly wage of an employee who is employed by two or more employers covered by the system , *by a private carrier* or by a plan of self-insurance on the date of a disabling accident or disease is equal to the sum of the wages earned or deemed to have been earned at each place of employment. The insurer shall advise **[a claimant]** *an injured employee* in writing of his entitlement to compensation for concurrent employment at the time of the initial payment of his compensation.

Sec. 43. NAC 616C.520 is hereby amended to read as follows:

616C.520 1. Each insurer shall include with the initial payment of compensation for a temporary total disability a copy of Form D-7, "Explanation of Wage Calculation."

2. Each insurer may provide Form D-6, "Injured Employee's Request for Compensation," to the [claimant] *injured employee* with each check for a temporary total disability. The form must be used by the [claimant] *injured employee* to request compensation for the temporary total disability if the insurer elects to use it. Failure to submit the form does not preclude the payment of the compensation if there is documentation on file which indicates a continued disability.

Sec. 44. NAC 616C.571 is hereby amended to read as follows:

616C.571 1. Except as otherwise provided in this section, if an injured employee is required to travel more than 40 miles per day to participate in a program of vocational rehabilitation, an insurer shall reimburse the injured employee for the costs of transportation:

(a) For not more than 200 miles per week; and

(b) Computed at a rate not to exceed the mileage allowance for state employees who use their personal vehicles for the convenience of the state.

2. For the entire period of a program of vocational rehabilitation, an insurer shall not reimburse an injured employee more than \$1,600 for the costs of transportation [, including:] *of which:*

(a) Not more than \$600 *may be* for costs incurred by the employee during the development of the program; and

(b) Not more than \$1,000 *may be* for costs incurred during the period in which the employee participates in the program.

[3. If an insurer requires an injured employee to attend the Jean Hanna Clark Rehabilitation Center as part of a program of vocational rehabilitation and the employee must travel more than 50 miles round trip, the insurer shall not include the cost of reimbursing such mileage in determining the maximum amounts for reimbursement set forth in this section.]

Sec. 45. NAC 616C.580 is hereby amended to read as follows:

616C.580 1. When a consultation is held by the system *or a private carrier* with an injured employee and the treating physician or chiropractor with respect to whether a proposed program of vocational rehabilitation is compatible with the [injured employee's] physical limitations [,] *of the injured employee*, and the employer is present, the system *or private carrier* shall explain to the employer:

- (a) Any incentives which are available to him if he participates in the vocational rehabilitation of the injured employee;
- (b) The estimated cost of the proposed program of vocational rehabilitation; and
- (c) That the cost of the program of vocational rehabilitation will be included in the calculation of his experience rating.

2. The system *or private carrier* shall send a written summary of the consultation to the employer, whether or not he was present during the consultation.

3. Except as otherwise provided in subsection 5, within 30 days after such a consultation, the employer shall give the system *or private carrier* a written notice stating whether or not he will offer the injured employee employment which is consistent with the [injured employee's]

physical limitations [.] *of the injured employee*. If the employer intends to make an offer of employment, the employer must make the offer to the injured employee in writing within 10 days after notifying the system *or private carrier* of his intent to offer employment. If the offer of employment does not meet the requirements set forth in NAC 616C.583, the employer must conform the offer to those requirements within an additional 10 days.

4. If the employer fails to offer employment that is compatible with the physical limitations of the injured employee or fails to meet any of the requirements imposed pursuant to subsection 3, the employer waives any right to object to the provision of any future vocational rehabilitation services to the injured employee.

5. If the offer of employment requires an evaluation of the feasibility of structural modifications to the [employer's] place of business [.] *of the employer*, the employer may have an additional 30 days to make an offer of employment to the injured employee.

6. If subsequent medical evidence demonstrates that the injured employee is unable to perform the work contained in the offer of employment made pursuant to subsection 3, and written notice of the opinion of the physician or chiropractor to this effect is given to the employer, the employer may make another offer of employment within 30 days after his receipt of the notice. If the employer fails to make another offer of employment pursuant to this subsection, the employer waives any right to object to the provision of future vocational rehabilitation services to the injured employee.

7. Except as otherwise provided in this subsection, if the employer makes an offer of employment, the injured employee must commence the employment within 30 days after the

offer has been made. The system *or private carrier* may extend the date on which the injured employee must commence the employment:

(a) For an additional 30 days if structural modifications to the [employer's] place of business *of the employer* are required; or

(b) For good cause shown.

The injured employee remains eligible for vocational rehabilitation maintenance until he commences the employment.

8. The system *or private carrier* shall submit a description of the proposed employment for the injured employee to the [employee's] treating physician or chiropractor [.] *of the injured employee*. Within 10 days after receiving the description, the treating physician or chiropractor shall determine if the employment is compatible with the physical limitations of the injured employee and inform the system *or private carrier* of the determination. If the treating physician or chiropractor fails to inform the system *or private carrier* of the determination within 10 days [, the system's] *after receiving the description, the* medical advisor *of the system or private carrier* or *the* consulting physician shall make the determination.

Sec. 46. NAC 616C.589 is hereby amended to read as follows:

616C.589 1. If the net wage of the employment being offered to an injured employee by an employer is less than the compensation for a temporary total disability, the insurer shall inform the injured employee that the wage will be supplemented by compensation for a temporary partial disability to equal the temporary total disability rate.

2. As used in this section, “net wage” has the meaning ascribed to it in subsection [7] 9 of NAC 616C.598.

Sec. 47. NAC 616C.592 is hereby amended to read as follows:

616C.592 1. An insurer may not finance saleable inventories in programs for self-employment. The prospective self-employed owner must find financing for that purpose.

2. [A claimant] *An injured employee* who elects self-employment rather than other types of rehabilitation may be required to [fund] *pay for* part of the proposed business.

3. There must be a reasonable possibility of success before the insurer may enter into an agreement for a program of self-employment.

4. An adequate report of an independent business consultant may be required before the insurer approves a program of self-employment.

Sec. 48. NAC 616C.598 is hereby amended to read as follows:

616C.598 1. If the wage [a claimant] *that an injured employee* receives upon reemployment is less than the compensation for a temporary total disability to which he is entitled, compensation for a temporary partial disability must be used to make up the difference.

2. To calculate compensation for a temporary partial disability, the wage earned upon reemployment:

(a) Must be based on the net wage; or

(b) Is that earned, on average:

(1) On each of 7 days in succession, if the calculation is for a weekly rate;

(2) On each of 14 days in succession, if the calculation is for a biweekly rate; or

(3) On each day of the [claimant's] pay period, if the calculation is for a semimonthly rate,
whichever is greater.

3. Compensation for a temporary partial disability is not available for any programs of vocational rehabilitation for self-employment.

4. An *injured* employee who [is] :

(a) *Is* capable of working, but rejects employment at a wage which exceeds compensation for a temporary total disability [, and who accepts] ; and

(b) *Accepts* a job at a lesser wage,

is not entitled to receive compensation for a temporary partial disability.

5. [A claimant] *An injured employee* who is capable of full-time employment in an occupation paying a wage which would exceed compensation for a temporary total disability, but who is unable to find such employment, is not entitled to receive compensation for a temporary partial disability.

6. Before compensation for a temporary partial disability may be granted, there must be a reasonable indication that the rate of compensation may be met within 2 years.

7. *Compensation for a temporary partial disability must be calculated on Form D-46.*

8. *Compensation for a temporary partial disability must be paid within 14 days after receipt from the injured employee of information regarding his wages.*

9. As used in this section, “net wage” means that amount paid to the [claimant] *injured employee* after the usual deductions are made for social security, income taxes [,] and other required state or federal deductions.

Sec. 49. NAC 616C.601 is hereby amended to read as follows:

616C.601 1. An injured employee who:

(a) Rejects a suitable program of vocational rehabilitation which is offered to him;

(b) Rejects employment which is within the limitations prescribed by a treating physician or chiropractor; or

(c) Refuses to cooperate with the insurer in the development of a program of vocational rehabilitation or a search for a job,

is subject to a suspension or termination of his vocational rehabilitation benefits.

2. An injured employee who has agreed to participate in a suitable program of vocational rehabilitation but who:

(a) Fails to report for scheduled activities, a search for a job, training [,] or employment;

(b) Reports but refuses to cooperate with the insurer;

(c) Reports but is impaired by alcohol or drugs not prescribed by a physician;

(d) Has an unexcused absence of 3 or more consecutive days; or

(e) Has unexcused absences that prevent him from:

(1) Completing the training in the period specified in the agreement for the program; or

(2) Developing skills for employment,

is subject to a suspension or termination of his vocational rehabilitation benefits.

3. An insurer may terminate vocational rehabilitation benefits if the injured employee has misrepresented or concealed a matter which was material to the evaluation of his eligibility or the provision of vocational rehabilitation services.

4. If the insurer is the system, it shall report to the employer each injured employee who rejects or fails to participate in a program of vocational rehabilitation. The report must contain a brief description of the facts and a statement of the [system's decision] *determination of the system* to suspend or terminate benefits at a specified future date.

5. Vocational rehabilitation benefits terminate on the date specified in the [system's report.] *report of the system.*

6. An insurer shall give the injured employee a written notice that his vocational rehabilitation benefits have been suspended or terminated and a statement of the reason for the suspension or termination.

7. An injured employee whose vocational rehabilitation benefits have been suspended or terminated is entitled to a hearing on the suspension or termination and may appeal from any decision of a hearing officer on that matter.

Sec. 50. NAC 616C.601 is hereby amended to read as follows:

616C.601 1. An injured employee who:

(a) Rejects a suitable program of vocational rehabilitation which is offered to him;

(b) Rejects employment which is within the limitations prescribed by a treating physician or chiropractor; or

(c) Refuses to cooperate with the insurer in the development of a program of vocational rehabilitation or a search for a job,

is subject to a suspension or termination of his vocational rehabilitation benefits.

2. An injured employee who has agreed to participate in a suitable program of vocational rehabilitation but who:

- (a) Fails to report for scheduled activities, a search for a job, training or employment;
- (b) Reports but refuses to cooperate with the insurer;
- (c) Reports but is impaired by alcohol or drugs not prescribed by a physician;
- (d) Has an unexcused absence of 3 or more consecutive days; or
- (e) Has unexcused absences that prevent him from:
 - (1) Completing the training in the period specified in the agreement for the program; or
 - (2) Developing skills for employment,

is subject to a suspension or termination of his vocational rehabilitation benefits.

3. An insurer may terminate vocational rehabilitation benefits if the injured employee has misrepresented or concealed a matter which was material to the evaluation of his eligibility or the provision of vocational rehabilitation services.

4. If the insurer is the system [.] *or a private carrier*, it shall report to the employer each injured employee who rejects or fails to participate in a program of vocational rehabilitation. The report must contain a brief description of the facts and a statement of the determination of the system *or private carrier* to suspend or terminate benefits at a specified future date.

5. Vocational rehabilitation benefits terminate on the date specified in the report of the system [.] *or private carrier*.

6. An insurer shall give the injured employee a written notice that his vocational rehabilitation benefits have been suspended or terminated and a statement of the reason for the suspension or termination.

7. An injured employee whose vocational rehabilitation benefits have been suspended or terminated is entitled to a hearing on the suspension or termination and may appeal from any decision of a hearing officer on that matter.

Sec. 51. NAC 616C.604 is hereby amended to read as follows:

616C.604 1. No payment will be made for medical care and vocational rehabilitation services which are provided outside the state without the prior written approval of the insurer or *his* designated agent unless good cause is shown for not obtaining prior approval.

2. **[A claimant]** *An injured employee* who is eligible for vocational rehabilitation services outside the state may be required to return to **[Nevada]** *this state* at his own expense:

(a) If gainful employment is offered in **[Nevada.]** *this state*.

(b) For an evaluation of his disability and an assessment of his prospects for rehabilitation before any program of vocational rehabilitation will be approved.

3. This section applies to all **[claimants]** *injured employees* who are outside the state.

Sec. 52. NAC 616C.106 is hereby repealed.

Sec. 53. 1. This section and sections 1, 12, 13, 16 to 30, inclusive, 32, 35 to 41, inclusive, 43, 44, 46 to 49, inclusive, 51 and 52 of this regulation become effective upon filing with the secretary of state.

2. Sections 2 to 11, inclusive, 14, 15, 31, 33, 34, 42, 45 and 50 of this regulation become effective July 1, 1999.

TEXT OF REPEALED SECTION

616C.106 Comprehensive integrated workup or independent medical evaluation:

Authorization; conditions.

1. An insurer may authorize a comprehensive integrated workup or an independent medical evaluation of a claimant to be conducted outside this state if:

(a) Any of the following conditions are met:

(1) The claimant lives in the state where the workup or evaluation is to be conducted;

(2) Persons who are engaged in practicing the medical specialty or specialties required for the workup or evaluation do not practice in this state; or

(3) Persons with the medical expertise required for the workup or evaluation do not practice in this state; and

(b) All of the following conditions are met:

(1) A written request for the workup or evaluation is submitted to the insurer by the claimant, his treating physician or chiropractor, or his employer;

(2) The medical adviser of the insurer expresses to the insurer in writing his agreement that the request is appropriate; and

(3) A physician or chiropractor, upon written request by the insurer, expresses to the insurer in writing his agreement that the request is appropriate. The physician or chiropractor to whom such a request is made must be licensed to practice in this state and must practice in the specialty most directly related to the injury of the claimant. The written agreement required by this subparagraph shall be deemed to have been given if the physician or chiropractor fails to respond in writing to the request of the insurer within 10 days after the request is mailed or delivered to him.

2. As used in this section, “comprehensive integrated workup” means the evaluation of a claimant by a team of medical specialists consisting of at least a physiatrist, neurologist, psychiatrist, an orthopedic surgeon, and a neurological surgeon, followed by the preparation of a report of the evaluation which must be concurred in by all the members of the team.