

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

**LCB File No. R007-06**

February 13, 2006

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

AUTHORITY: §§1-5, 8 and 12, NRS 616A.400; §6, NRS 616A.400 and 616C.477; §7, NRS 616A.400 and 616C.420; §9, NRS 616A.400, 616D.200 and 616D.220; §§10 and 11, NRS 616A.400 and 616D.120.

A REGULATION relating to industrial insurance; revising certain requirements of insurers and third-party administrators concerning the administration of files of claims and records and the payment of compensation to claimants; establishing the circumstances under which an injured employee is entitled to compensation for lost wages while receiving medical treatment under certain circumstances; increasing the maximum amount of certain fines and benefit penalties; expanding the list of prohibited acts for which a benefit penalty may be imposed; revising certain requirements concerning duties of employers to provide information to the Administrator of the Division of Industrial Relations of the Department of Business and Industry concerning the amount of premiums owed by the employer under certain circumstances; and providing other matters properly relating thereto.

**Section 1.** Chapter 616A of NAC is hereby amended by adding thereto a new section to read as follows:

*“Office” means a place of business which is located in this State and which is operated and maintained by an insurer or third-party administrator. The term does not include the private residence of a person who works for the insurer or third-party administrator.*

**Sec. 2.** NAC 616A.010 is hereby amended to read as follows:

616A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in:

1. NRS 616A.030 to 616A.360, inclusive; and
2. NAC 616A.015 to 616A.270, inclusive, *and section 1 of this regulation,*

↪ have the meanings ascribed to them in those sections.

**Sec. 3.** NAC 616B.001 is hereby amended to read as follows:

616B.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in:

1. NRS 616A.030 to 616A.360, inclusive; and
2. NAC 616A.015 to 616A.270, inclusive, *and section 1 of this regulation,*

↪ have the meanings ascribed to them in those sections.

**Sec. 4.** NAC 616B.013 is hereby amended to read as follows:

616B.013 1. An insurer *or third-party administrator* shall ensure that the files of claims and records maintained ~~[by the insurer]~~ pursuant to chapters 616A to 617, inclusive, of NRS or a regulation adopted pursuant thereto are available for inspection *during regular business hours* by ~~[the]~~ :

(a) *An injured worker;*

(b) *The attorney or other authorized representative of an injured worker;*

(c) *The* Commissioner or his designee ; or ~~[by the Administrator during regular business hours.]~~

(d) *The Administrator.*

2. All files of the claims must be ~~[kept, maintained and]~~ administered in this State ~~[.]~~ *and be available for inspection at an office of the insurer or third-party administrator.*

3. After reviewing the file of a claim, the Commissioner or Administrator will report his findings to the insurer.

**Sec. 5.** NAC 616B.021 is hereby amended to read as follows:

616B.021 Not later than the date that compensation is due to a claimant, an insurer or third-party administrator shall:

1. Mail a check for compensation to ~~the~~ :

(a) *The* claimant; or

(b) *Upon the direction of the claimant, the attorney or other authorized representative of the claimant; or*

2. ~~Make~~ *If directed by the claimant, make* a check for compensation available to the claimant *or the attorney or other authorized representative of the claimant* in ~~the~~ *an* office of the insurer or third-party administrator.

**Sec. 6.** Chapter 616C of NAC is hereby amended by adding thereto a new section to read as follows:

*1. In determining whether an injured employee is entitled to compensation pursuant to NRS 616C.477, the insurer shall calculate the required distance the injured employee is required to travel to receive medical treatment with the use of:*

(a) *Any computer software that determines the distance between one or more geographic locations;*

(b) *A map which indicates the distance between one or more geographic locations and which has been published;*

(c) *A travel calculator established on the Internet; or*

(d) *A properly calibrated odometer that is capable of verifying the distance between one or more geographic locations.*

*2. The amount of time for which an injured employee who is entitled to compensation pursuant to this section is absent from the place of employment of the responsible employer includes the amount of time the injured employee spends:*

*(a) Traveling from the place of employment to the location at which the employee receives medical treatment;*

*(b) Awaiting and receiving medical treatment at the facility for such treatment; and*

*(c) Traveling to return to the place of employment from the location at which he receives medical treatment.*

*3. If the amount of time for which the injured employee is entitled to compensation pursuant to subsection 2 is:*

*(a) Four hours or less in 1 working day, the injured employee is entitled to compensation at the rate of 50 percent of the daily rate of compensation that the employee is entitled to pursuant to NRS 616C.475 for a temporary total disability.*

*(b) More than 4 hours in 1 working day, the injured employee is entitled to compensation at the rate of 100 percent of the daily rate of compensation that the employee is entitled to pursuant to NRS 616C.475 for a temporary total disability.*

*4. If an injured employee seeks compensation pursuant to this section, the injured employee shall submit the request for such compensation to the employer on form D-24, Request for Reimbursement of Expenses for Travel and Lost Wages, as required by NAC 616A.480.*

*5. As used in this section, “place of employment” means the office, facility or site of the responsible employer at which the injured employee is required to report for work, including, without limitation, the office, facility or site at which the injured employee:*

*(a) Is regularly scheduled to report for work; or*

*(b) Is scheduled to report for a particular period, date or assignment, if the office, facility or site is different from the regularly scheduled location to report to work.*

**Sec. 7.** NAC 616C.441 is hereby amended to read as follows:

616C.441 **1.** The ~~[rate of pay]~~ *earnings of an injured employee* on the date ~~[of the]~~ *on which an* accident *occurs* or ~~[the onset of the]~~ *the date on which an injured employee contracts an occupational* disease *arising out of employment for which the employee is eligible for compensation pursuant to chapters 616A to 616D, inclusive, of NRS* will be used to calculate the average monthly wage.

**2.** *As used in this section, “earnings” includes, without limitation, the money, goods and services set forth in NAC 616C.423.*

**Sec. 8.** NAC 616C.571 is hereby amended to read as follows:

616C.571 ~~[1.—Except as otherwise provided in this section, if]~~ **If** an injured employee is required to travel more than ~~[40]~~ **50** 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]~~ **which must be computed** at a rate ~~[not to exceed]~~ **equal to** 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 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.]~~

**Sec. 9.** NAC 616D.340 is hereby amended to read as follows:

616D.340 ~~[Within 10 working days after the]~~

*1. If the Administrator notifies an employer ~~[of his determination, made pursuant to NRS 616D.200,]~~ that the employer failed to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS ~~[:~~*

~~—1. The employer shall]~~ *and that the employer is required to provide information to the Administrator for the calculation of the premiums that would otherwise have been owed to a private carrier, the employer or the former or current private carrier of the employer, as applicable, must provide written information to the Administrator that verifies the amount of ~~[pay earned by his employees during the period that the employer was doing business in this state without providing and securing compensation; or]~~ the premiums that the employer otherwise would have owed to a private carrier for the period that the employer was uninsured.*

*2. If the Administrator notifies an employer that the employer knowingly failed to report a material fact concerning the amount of payroll upon which his premium was based pursuant to NRS 616C.220 and that the employer is required to provide information to the Administrator for the calculation of the premium that would have been due had the proper information been submitted, the employer or the former or current private carrier of the employer, as applicable, must provide written information to the Administrator that verifies the amount of the premium that would have been due if the proper information had been submitted.*

3. If the employer *or the former or current private carrier of the employer, as applicable,* fails or is unable to provide the information required pursuant to subsection 1 ~~[, he shall calculate and provide to the Administrator an estimate]~~ *or 2, the employer shall verify the actual amount* of the pay earned by his employees during the period that the employer was ~~[doing business in this state without providing and securing compensation, using the wages actually received or deemed to be received, pursuant to the applicable provisions of chapters 616A to 617, inclusive, of NRS, by his employees.]~~ *uninsured or in which the employer knowingly failed to report a material fact concerning the amount of payroll upon which the premium was based.*

4. *If the employer or the former or current private carrier of the employer, as applicable, fails or is unable to provide the information required by subsection 1, 2 or 3, the Administrator may estimate the premiums that the employer otherwise would have owed to a private carrier for the period during which the employer was uninsured or during which the employer failed to report a material fact concerning the amount of payroll upon which the premium was based.*

**Sec. 10.** NAC 616D.345 is hereby amended to read as follows:

616D.345 1. ~~[Except as otherwise provided in NAC 616D.375, if]~~ *If* the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 ~~[notifies the Administrator, pursuant to NRS 616D.120, that the Unit will]~~ *does* not prosecute an employer for failing to provide and secure compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS or any regulation adopted pursuant thereto, the Administrator will:

(a) For a failure to provide and secure compensation for a period of ~~[30]~~ *90* days or less, impose an administrative fine ~~[in an amount that equals 10 percent of the expected annual premium of the employer or \$500, whichever is greater.]~~ *not to exceed \$1,000.*

(b) For a failure to provide and secure compensation for a period of more than ~~[30]~~ 90 days, *but not more than 1 year*, impose an administrative fine in an amount ~~[that equals 20 percent of the expected annual premium of the employer or \$1,000, whichever is greater.]~~ *not to exceed \$5,000.*

(c) *For a failure to provide and secure compensation for a period of more than 1 year, impose an administrative fine not to exceed \$15,000.*

2. In ~~[no case will]~~ *determining the amount of the administrative fines pursuant to subsection 1*, the Administrator ~~[impose an administrative fine pursuant to this section that is greater than \$10,000.]~~ *will consider whether:*

(a) *The employer is a small employer; and*

(b) *The failure to provide and secure compensation was the result of:*

(1) *An error of a private carrier or other third party;*

(2) *An unintentional error of the employer; or*

(3) *An intentional violation by the employer.*

3. *If the employer is a small employer and the failure to provide and secure compensation was not the result of an intentional violation by the employer, the Administrator may reduce the administrative fine imposed pursuant to this section by not more than 50 percent of the fine.*

4. *As used in this section, “small employer” means an employer which employs less than 150 full-time or part-time employees.*

**Sec. 11.** Section 35 of LCB File No. R118-02, which was adopted by the Administrator of the Division of Industrial Relations of the Department of Business and Industry and was filed with the Secretary of State on September 7, 2005, is hereby amended to read as follows:

**Sec. 35.** 1. To determine the amount of a benefit penalty required to be paid pursuant to subsection 3 of NRS 616D.120, the Administrator will determine that the violation caused physical or economic harm to the injured employee or his dependents if he finds, by a preponderance of the evidence, that:

- (a) The harm would not have occurred but for the violation;
- (b) The violation was a substantial factor in bringing about the harm; and
- (c) There is no supervening cause that is responsible for bringing about the harm.

2. Physical harm must be established by a preponderance of objective medical evidence in the form of existing medical records or medical records furnished by the claimant.

3. The Administrator will determine the amount of a benefit penalty required to be paid pursuant to subsection 3 of NRS 616D.120 according to the following schedule. In addition to the required minimum benefit penalty of \$5,000, a claimant will be awarded ~~[\$1,000]~~ **\$1,625** for each point assessed, but in no event will the amount of the benefit penalty be greater than ~~[\$25,000.]~~ **\$37,500.**

Points assessed for physical harm:

Temporary minor harm . . . . .	2 points
Temporary major harm . . . . .	5 points
Permanent minor harm . . . . .	5 points
Permanent major harm . . . . .	10 points
Death . . . . .	20 points

Points assessed for the amount of compensation found to be due the claimant:

Amount of compensation

\$3,001 - \$5,000 . . . . .	1 point
\$5,001 - \$7,000 . . . . .	2 points
\$7,001 - \$9,000 . . . . .	3 points
\$9,001 - \$11,000 . . . . .	4 points
\$11,001 - \$13,000 . . . . .	5 points
\$13,001 - \$15,000 . . . . .	6 points
\$15,001 - \$17,000 . . . . .	7 points
\$17,001 - \$19,000 . . . . .	8 points
\$19,001 - \$21,000 . . . . .	9 points
An amount that is greater than \$21,000. . . . .	10 points

Points assessed for prior violations:

One prior violation . . . . .	1 point
Two prior violations . . . . .	3 points
More than two prior violations . . . . .	5 points

Points assessed for economic harm:

Amount of economic harm

\$6,001 - \$7,000 . . . . .	1 point
\$7,001 - \$8,000 . . . . .	2 points
\$8,001 - \$9,000 . . . . .	3 points

\$9,001 - \$10,000 . . . . .	4 points
\$10,001 - \$11,000 . . . . .	5 points
\$11,001 - \$12,000 . . . . .	6 points
\$12,001 - \$13,000 . . . . .	7 points
\$13,011 - \$14,000 . . . . .	8 points
\$14,001 - \$15,000 . . . . .	9 points
More than \$15,000 . . . . .	10 points

4. To determine the number of prior violations of an insurer, organization for managed care, health care provider, third-party administrator or employer, the Administrator will consider only those fines and benefit penalties imposed pursuant to paragraphs (a) to (e), inclusive, *and (h)* of subsection 1 of NRS 616D.120 in the immediately preceding ~~3~~ 5 years.

5. As used in this section:

(a) “Dependent” means a person who:

(1) At the time of the violation, is:

(I) The spouse of the injured employee;

(II) A child of the injured employee and is under 18 years of age; or

(III) A child of the injured employee, is 18 years of age or older and is physically

or mentally incapacitated and unable to earn a wage; or

(2) Is a parent of the injured employee, a child of the injured employee who is 18 years of age or older, a stepchild of the injured employee or a sibling of the injured

employee if that person's dependency upon the injured employee is established by a federal income tax return of the injured employee or by any other reliable evidence.

(b) "Economic harm" includes:

- (1) The loss of money or an item of monetary value; and
- (2) The deprivation of a reasonable expectation of a financial or monetary advantage.

(c) "Permanent major harm" means physical harm that:

- (1) Results in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and
- (2) Is unlikely to be alleviated in spite of medical treatment that a reasonable person is willing to undergo.

(d) "Permanent minor harm" means physical harm that:

- (1) Does not result in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and
- (2) Is unlikely to be alleviated in spite of medical treatment that a reasonable person is willing to undergo.

(e) “Physical harm” means death or any physiological disorder or condition, cosmetic disfigurement or anatomic loss affecting one or more of the following body systems:

- (1) The neurological system.
- (2) The musculoskeletal system.
- (3) Special sense organs.
- (4) The respiratory system, including, without limitation, speech organs.
- (5) The cardiovascular system.
- (6) The reproductive system.
- (7) The digestive system.
- (8) The genitourinary system.
- (9) The hemic and lymphatic system.
- (10) The skin.
- (11) The endocrine system.

(f) “Temporary major harm” means physical harm that:

(1) Results in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is likely to be alleviated with or without medical treatment.

(g) “Temporary minor harm” means physical harm that:

(1) Does not result in a complete or significant loss of the ability to engage in activities of daily living, including, without limitation, caring for oneself, performing

manual tasks, walking, standing, sitting, seeing, hearing, speaking, breathing, learning, working, sleeping, functioning sexually, and engaging in normal recreational and social activities; and

(2) Is likely to be alleviated with or without medical treatment.

**Sec. 12.** NAC 616D.350, 616D.355, 616D.360, 616D.370, 616D.375, 616D.380 and 616D.385 are hereby repealed.

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### TEXT OF REPEALED SECTIONS

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**616D.350 Failure to maintain compensation: Verification or estimation of amount of payroll. (NRS 616A.400, 616D.200)** After the Administrator notifies an employer of his determination, made pursuant to NRS 616D.200, that the employer failed to maintain compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS:

1. The employer shall, within 10 working days, provide written information to the Administrator that verifies the amount of pay earned by his employees during the period that the employer was doing business in this state without maintaining the compensation; or

2. If the employer fails or is unable to provide the information pursuant to subsection 1, the Administrator will estimate the payroll of the employer for the period that the employer was doing business in this state without maintaining the compensation, based on reports of payroll previously submitted by the employer to the insurer and on the wages deemed to be received by

the employer's employees pursuant to the applicable provisions of chapters 616A to 617, inclusive, of NRS.

**616D.355 Failure to maintain compensation: Imposition of administrative fine. (NRS 616A.400, 616D.120)**

1. Except as otherwise provided in NAC 616D.375, if the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the Unit will not prosecute an employer for failing to maintain compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS or any regulation adopted pursuant thereto, the Administrator will:

(a) If the employer failed to maintain compensation for a period of 30 days or less:

(1) For the first violation, impose an administrative fine in an amount that equals 10 percent of the expected annual premium of the employer or \$250, whichever is greater.

(2) For the second violation, impose an administrative fine in an amount that equals 25 percent of the expected annual premium of the employer or \$1,000, whichever is greater.

(3) For the third violation, impose an administrative fine in an amount that equals 50 percent of the expected annual premium of the employer or \$5,000, whichever is greater.

(4) For the fourth or any subsequent violation, impose an administrative fine of \$10,000.

(b) If the employer failed to maintain compensation for a period of more than 30 days:

(1) For the first violation, impose an administrative fine in an amount that equals 20 percent of the expected annual premium of the employer or \$500, whichever is greater.

(2) For the second violation, impose an administrative fine in an amount that equals 50 percent of the expected annual premium of the employer or \$2,000, whichever is greater.

(3) For the third or any subsequent violation, impose an administrative fine of \$10,000.

2. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than \$10,000.

**616D.360 Failure to provide, secure and maintain compensation: Verification of amount of charge imposed. (NRS 616A.400, 616D.200)** The amount of any charge imposed by the Administrator pursuant to NRS 616D.200 is subject to verification by auditors of the insurer, including auditors employed by the Industrial Insurance Regulation Section.

**616D.370 Failure to provide, secure and maintain compensation: Modification of amount of charge imposed. (NRS 616A.400, 616D.200)** At any hearing held pursuant to subsection 2 of NRS 616D.220, on appeal from a determination of the Administrator made pursuant to NRS 616D.200, the Administrator may modify the amount charged the employer if it is shown by a preponderance of the evidence that the:

1. Failure to provide and secure or maintain compensation was caused by an error on the part of the insurer; or
2. Employer:
  - (a) Was exempt from the requirement to provide and secure or maintain compensation; or
  - (b) Had good cause for his failure to provide and secure or maintain compensation.

**616D.375 Failure to provide, secure and maintain compensation resulting in assignment of claim to uninsured employers' claim account: Imposition of administrative fine. (NRS 616A.400, 616D.120)**

1. If the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the unit will not prosecute an employer for failing to provide and secure or to maintain compensation as required by the terms of chapters 616A to 616D, inclusive, of NRS or any regulation adopted pursuant thereto and that

failure results in an uninsured claim that is assigned to the Uninsured Employers' Claim Account pursuant to NRS 616C.220, the Administrator will, for each violation, impose an administrative fine in an amount that equals 25 percent of the expected annual premium of the employer or \$1,000, whichever is greater.

2. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than \$10,000.

**616D.380 False statement or failure to report material fact concerning amount of payroll: Imposition of administrative fine. (NRS 616A.400, 616D.120)**

1. If the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the Unit will not prosecute an employer for knowingly making a false statement or knowingly failing to report a material fact concerning the amount of payroll upon which a premium is based in violation of NRS 616D.220 or any regulation adopted pursuant thereto, the Administrator will:

(a) For the first violation that results in an unreported or underreported payroll, impose an administrative fine of 10 percent of the expected annual premium of the employer or \$250, whichever is greater.

(b) For the second violation that results in an unreported or underreported payroll, impose an administrative fine of 25 percent of the expected annual premium of the employer or \$1,000, whichever is greater.

(c) For the third violation that results in an unreported or underreported payroll, impose an administrative fine of 50 percent of the expected annual premium of the employer or \$5,000, whichever is greater.

(d) For the fourth or any subsequent violation that results in an unreported or underreported payroll, impose an administrative fine of \$10,000.

2. For the purpose of imposing administrative fines pursuant to this section, the Administrator will not deem a second, third, fourth or subsequent violation to have occurred unless it occurs in an audit period that is subsequent to the audit period in which the previous violation occurred.

3. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than \$10,000.

**616D.385 Misrepresentation of classification or duties of employee: Imposition of administrative fine. (NRS 616A.400, 616D.120)**

1. If the Fraud Control Unit for Industrial Insurance established pursuant to NRS 228.420 notifies the Administrator, pursuant to NRS 616D.120, that the Unit will not prosecute an employer for knowingly misrepresenting the classification or duties of an employee in violation of NRS 616D.220 or any regulation adopted pursuant thereto, the Administrator will:

(a) For the first violation, impose an administrative fine of 10 percent of the expected annual premium of the employer or \$250, whichever is greater.

(b) For the second violation, impose an administrative fine of 25 percent of the expected annual premium of the employer or \$1,000, whichever is greater.

(c) For the third violation, impose an administrative fine of 50 percent of the expected annual premium of the employer or \$5,000, whichever is greater.

(d) For the fourth or any subsequent violation, impose an administrative fine of \$10,000.

2. For the purpose of imposing administrative fines pursuant to this section, the Administrator will not deem a second, third, fourth or subsequent violation to have occurred

unless it occurs in an audit period that is subsequent to the audit period in which the previous violation occurred.

3. In no case will the Administrator impose an administrative fine pursuant to this section that is greater than \$10,000.