REVISED PROPOSED REGULATION OF THE

BOARD FOR THE ADMINISTRATION OF THE SUBSEQUENT

INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS

LCB File No. R025-18

June 29, 2018

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

AUTHORITY: §§1-12 and 15-19, NRS 616A.400, 616B.554 and 616B.557; §13, NRS 233B.100 and 616B.551; §14, NRS 233B.120 and 616B.551.

A REGULATION relating to industrial insurance; establishing guidelines for the acceptance of ratings for permanent physical impairment and rulings on claims for reimbursement from the Subsequent Injury Account for Self-Insured Employers; establishing requirements for the service of certain documents on or by a claimant; establishing certain methods of proving a self-insured employer's knowledge of an employee's preexisting permanent physical impairment; establishing guidelines for determining a permanent physical impairment; providing for the reimbursement of certain benefits paid in the form of a lump sum or an annuity; establishing procedures to consider a petition to adopt, amend or repeal a regulation or to issue a declaratory order or advisory opinion; authorizing the Administrator of the Division of Industrial Relations of the Department of Business and Industry to refuse to process incomplete claims and to obtain additional information; extending the time in which the Administrator will examine and provide a recommendation relating to a claim; establishing procedures relating to a hearing on a claim; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers to adopt regulations establishing procedures for submitting claims against the Subsequent Injury Account for Self-Insured Employers. (NRS 616B.557) **Section 2** of this regulation establishes guidelines for use by the Board in making determinations on ratings of permanent physical impairments for the purposes of industrial insurance. **Sections 3-8** of this regulation establish requirements relating to service of process of notices, pleadings and other documents concerning claims for reimbursement from the Account. **Section 9** of this regulation establishes guidelines for use by the Board in making determinations of proof of a self-insured

employer's knowledge of an employee's preexisting permanent physical impairment. **Section 10** of this regulation establishes guidelines for use by the Board in rating the permanent physical impairment of multiple body parts. **Section 11** of this regulation sets forth circumstances under which the Board may authorize reimbursement from the Account in the form of a lump-sum payment. **Section 12** of this regulation establishes procedures for reimbursement from the Account for certain compensation paid by annuities purchased by a self-insured employer to an injured employee.

Existing law authorizes the Board to prescribe rules and regulations for its own management and government. (NRS 616B.551) Existing law also requires each agency to accept petitions requesting the adoption, filing, amendment or repeal of any regulation, to prescribe the form for such a petition and to deny such a petition in writing or initiate regulation-making proceedings within 30 days after the submission of such a petition. (NRS 233B.100) **Section 13** of this regulation provides for the consideration by the Board of a petition requesting that the Board adopt, amend or repeal a regulation. Additionally, existing law requires that each agency provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, regulation or decision of the agency. (NRS 233B.120) **Section 14** of this regulation provides for the consideration by the Board of a petition for the issuance of such a declaratory order or advisory opinion.

Existing regulations establish certain requirements for the contents of a claim against the Subsequent Injury Account for Self-Insured Employers. (NAC 616B.7702) **Section 16** of this regulation provides that the Administrator of the Division of Industrial Relations of the Department of Business and Industry may refuse to process a claim for reimbursement from the Account that is incomplete or nonconforming, and that the Administrator is not prohibited from requiring or obtaining additional information that is related to a claim.

Existing regulations provide that the Administrator shall, within 45 days after receipt of a claim, submit to the Board his or her recommendation concerning the claim and provide certain notifications to the self-insured employer relating to that recommendation. (NAC 616B.7704) **Section 17** of this regulation extends the time within which the Administrator must submit his or her recommendation and provide certain notifications to the self-insured employer to within 60 days after the date on which the claim is served on the Administrator. **Section 17** also revises the information which the Administrator must include with his or her recommendation. Finally, **section 17** provides that the Board will approve a claim only if the self-insured employer proves by a preponderance of the evidence that the requirements of existing law are satisfied.

Existing regulations provide that the Board will, upon the request of a self-insured employer whose claim is denied, conduct a hearing regarding the claim. (NAC 616B.7706) **Sections 18 and 19** of this regulation establish, repeal and revise various provisions relating to the conduct of such a hearing.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. ***1. For the purposes of determining whether a preexisting impairment is a permanent physical impairment:***

(a) If the preexisting impairment of the insured employee arose out of and in the course of his or her employment and the employee has been assigned a rating of permanent impairment which is no longer appealable, the Board may choose to accept the rating for the preexisting impairment if the rating was assigned based on the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment that was in effect on the date on which the preexisting impairment was rated;

(b) If a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers has been served on the Administrator pursuant to NAC 616B.7702 but the preexisting impairment has not yet been assigned a rating, the Administrator may choose not to make a recommendation on the claim and the Board may choose not to rule on the claim until after a determination of rating has been made concerning the preexisting impairment in accordance with the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment that was in effect on the date on which the subsequent injury was rated; and

(c) If a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers has been served on the Administrator pursuant to NAC 616B.7702 and a rating has been assigned to the preexisting impairment but the rating is not deemed final, the Administrator may choose not to make a recommendation on the claim and the Board may

choose not to rule on the claim until the rating has been finalized in accordance with the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment that is in effect on the date on which the rating of the preexisting impairment is finalized.

2. The Board and the Administrator are not bound by any agreement between an injured employee and a self-insured employer concerning:

(a) The rating of permanent impairment assigned to a preexisting condition or a subsequent injury;

(b) The edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment which should be used to assign a rating of permanent impairment to a preexisting condition or a subsequent injury; or

(c) The apportionment of the percentage of disability between the preexisting condition and the subsequent injury.

Sec. 3. *A claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers submitted pursuant to NAC 616B.7702 must include, without limitation, the name of the person designated by the self-insured employer to accept service on behalf of the self-insured employer submitting the claim and the mailing address and any facsimile number and electronic mail address at which that person may be served with notices, pleadings and other documents. Except as otherwise provided in section 5 of this regulation, all notices, pleadings and other documents, including, without limitation, any recommendations of the Administrator, must be served on the person designated in the claim pursuant to this section.*

Sec. 4. ***At the time the Administrator determines that a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers is complete and makes a recommendation regarding the claim, the Administrator shall serve on the person designated pursuant to section 3 or 5 of this regulation, as applicable, a copy of the recommendation, a copy of each document and record upon which the Administrator relied to make the recommendation and a list of the witnesses whom the Administrator may call to testify in support of the recommendation.***

Sec. 5. ***1. A self-insured employer who is represented by legal counsel or a lay advocate shall, by service on the Board and the Administrator, provide written notice of the name and business address of the legal counsel or lay advocate, as applicable, and any facsimile number or electronic mail address at which the legal counsel or lay advocate must be served with any notices, pleadings and other documents.***

2. If a self-insured employer has provided the notice required by subsection 1, the Board and the Administrator will thereafter serve all notices, pleadings and other documents on the legal counsel or lay advocate designated pursuant to subsection 1, as applicable, exclusively, unless the self-insured employer provides written notice to the Board and the Administrator of a change in representation.

Sec. 6. ***Service on the Board of any filing, pleading, notice or other document required by NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation must be made on the legal counsel for the Board. If the Board does not have legal counsel, service must be made on the Administrator for transmission to the Board.***

Sec. 7. ***Except for the submission of a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers pursuant to NAC 616B.7702, service on the Administrator of any filing, pleading, notice or other document required by NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation must be made on the legal counsel for the Administrator.***

Sec. 8. ***1. Except as otherwise provided by a specific statute or regulation, service of any notice, pleading or other document required by NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation may be hand-delivered or made by mail, electronic mail or facsimile.***

2. Service by hand delivery shall be deemed complete upon the delivery of the document to the person on whom service is to be made as provided for in Rule 4 of the Nevada Rules of Civil Procedure.

3. Service by mail shall be deemed complete 3 days after the date on which the document is correctly addressed and mailed to the person upon whom service is to be made as provided for in Rule 5 of the Nevada Rules of Civil Procedure.

4. Service by electronic mail shall be deemed complete upon the successful transmission of the electronic mail to the electronic mail address of:

(a) The person upon whom service is to be made pursuant to section 3 or 5 of this regulation, as applicable;

(b) The legal counsel for the Board or the Administrator if service is made pursuant to section 6 of this regulation; or

(c) The Administrator or legal counsel for the Administrator, if service is made pursuant to section 7 of this regulation.

5. Service by facsimile shall be deemed complete upon the successful transmission of the facsimile to the facsimile number of:

(a) The person upon whom service is to be made pursuant to section 3 or 5 of this regulation, as applicable;

(b) The legal counsel for the Board or the Administrator if service is made pursuant to section 6 of this regulation; or

(c) The Administrator or legal counsel for the Administrator, if service is made pursuant to section 7 of this regulation.

Sec. 9. *1. Except as otherwise provided in subsection 2, as used in NRS 616B.557, the Board interprets the term "written records" to include:*

(a) Any written documentation kept by the self-insured employer in the ordinary course of business:

(1) Contemporaneously with the hiring of the injured employee.

(2) During the continued employment of the injured employee and before the date of the subsequent injury.

(b) Any other written documentation if the Board determines that the written documentation constitutes an objective record of the self-insured employer's knowledge of the injured employee's preexisting permanent physical impairment:

(1) At the time the self-insured employer hired the injured employee.

(2) If a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers is related to the retention in employment of an employee after a self-insured employer acquired knowledge of the employee's preexisting permanent physical impairment and the written documentation existed and was possessed by the self-insured employer at the time of hire or before the date of the subsequent injury, during the continued employment of the injured employee.

(3) At any time before the injured employee suffered the subsequent injury for which reimbursement is being requested.

2. An affidavit, letter, declaration or other document regarding the preexisting impairment which is prepared after the subsequent injury does not satisfy the requirement of proof of the self-insured employer's knowledge that the injured employee suffered from a preexisting permanent physical impairment.

3. To satisfy the requirement set forth in subsection 4 of NRS 616B.557 that the self-insured employer establish by written records that the self-insured employer had knowledge of the preexisting permanent physical impairment of the injured employee, the self-insured employer must establish by a preponderance of the evidence that the contemporaneous written records show that:

(a) The self-insured employer had knowledge of the preexisting permanent physical impairment of the injured employee at the time the employee was hired; or

(b) The self-insured employer:

(1) Became aware of the preexisting permanent physical impairment of the injured employee after the employee was hired and before the occurrence of the subsequent injury; and

(2) Continued to employ the employee notwithstanding the self-insured employer's knowledge of the preexisting permanent physical impairment.

Sec. 10. *1. For the purposes of subsection 3 of NRS 616B.557, the ratings of permanent impairment of two or more body parts, organ systems or organ functions may not be added together or combined to reach a rating of permanent impairment of 6 percent or more of the whole person to qualify a condition as a permanent physical impairment.*

2. The Administrator shall, and the Board will, use the American Medical Association's Guides to the Evaluation of Permanent Impairment as a reference for determining whether a rating of permanent impairment totals 6 percent or more of the whole person to qualify a condition as a permanent physical impairment pursuant to NRS 616B.557. Multiple body parts unrelated to a subsequent injury will not be considered as one impairment. Each body part, organ system or organ function included within a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers must satisfy the definition of "permanent physical impairment" in NRS 616B.557 to qualify the body part, organ system or organ function for reimbursement under the claim.

Sec. 11. *1. Except as otherwise provided in subsection 2 or by specific statute or regulation, the Board may authorize reimbursement from the Subsequent Injury Account for Self-Insured Employers for the payment of benefits in the form of a lump sum if:*

(a) The applicant meets the requirements of NRS 616B.557;

(b) The compensation paid or to be paid was due;

(c) A lump-sum payment is reasonable, is in the best interest of the injured employee and will eliminate any contingent future liability against the Subsequent Injury Account for Self-Insured Employers; and

(d) The lump-sum payment:

(1) If the payment is being made for a permanent partial disability, meets the requirements of NRS 616C.495; or

(2) If the payment is being made for vocational rehabilitation services, meets the requirements of NRS 616C.590 or 616C.595.

2. The Board will not authorize reimbursement from the Subsequent Injury Account for Self-Insured Employers for:

(a) Any payment that is prohibited by NRS 616C.410; or

(b) A lump-sum payment that was not made to an injured employee.

3. In considering whether to authorize reimbursement from the Subsequent Injury Account for Self-Insured Employers for the payment of benefits in the form of a lump sum pursuant to this section, the Board may consider any information that it deems relevant, including, without limitation, the application of any statute or regulation.

Sec. 12. *1. A self-insured employer who purchases an annuity to satisfy the payment of a claim that is filed with the self-insured employer pursuant to chapters 616A to 617, inclusive, of NRS may submit a claim for reimbursement from the Subsequent Injury Account for Self-Insured Employers in accordance with NAC 616B.770 to 616B.7714, inclusive, and sections 2 to 14, inclusive, of this regulation.*

2. The self-insured employer may submit, as provided in subsection 3, a claim for reimbursement for the amount of compensation that the annuity paid to the injured employee for whom the annuity was purchased.

3. The self-insured employer may submit a claim for reimbursement annually on the anniversary date of the purchase of the annuity or more frequently with good cause shown.

4. The Board will not approve or pay a claim for reimbursement for the cost of an annuity submitted pursuant to this section for:

(a) Any amounts which exceed the lesser of:

(1) The price of the annuity; or

(2) The aggregate amount of compensation that the injured employee has been paid from the annuity;

(b) Attorney's fees relating to the purchase of the annuity; or

(c) Any administrative expenses or other expenses relating to the purchase of the annuity, including, without limitation, expenses for the copying of records.

5. As used in this section, "good cause" includes, without limitation, a financial exigency or extraordinary circumstance.

Sec. 13. *1. A petition may be filed with the Board requesting that the Board adopt, amend or repeal a regulation governing the administration of the Subsequent Injury Account for Self-Insured Employers. Such a petition must include, without limitation:*

(a) The name and mailing address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, amended or repealed;

(c) The reason for the adoption, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, amendment or repeal of the regulation.

2. A person filing such a petition shall file an original and five copies of the petition and any supporting documentation with the Board and, within 5 days after filing with the Board, serve one copy on the Administrator. Such a petition may be filed or served electronically, by personal service or by registered mail or certified mail, return receipt requested.

3. The Board may decline to take action on a petition which does not contain the information required by subsection 1 or was not filed or served pursuant to subsection 2.

4. Except as otherwise provided in subsection 3, the Board will hold a hearing to consider a petition within 30 days after the petition is filed with the Board. The Administrator may file with the Board a recommendation concerning the disposition of the petition not later than 15 days before the date of the hearing and shall, upon filing such a recommendation, serve a copy on the petitioner.

5. A person, other than a person who filed the petition, who believes that he or she may be directly and substantially affected by the hearing may seek leave to intervene in the hearing by filing with the Board a written motion to intervene. Such a motion must set forth the legal and factual basis in support of the person's standing to intervene and for the person's position in favor of or opposition to the petition. Such a motion must be filed with the Board and served on the Administrator electronically, by personal service or by registered mail or certified mail, return receipt requested, not later than 20 days before the hearing. If the Board grants such a motion, the Board will enter an order allowing the person to participate as an intervener and take into consideration the position of the person on the merits of the petition.

6. In conducting a hearing to consider a petition, the Board is not bound by the technical rules of evidence, and any informality in a proceeding or the manner of taking testimony does not invalidate any order, decision, ruling or regulation made, approved or confirmed by the Board. The rules of civil procedure and evidence of courts of this State will be followed generally, but may be relaxed at the discretion of the Board if deviation from the technical rules of civil procedure and evidence will aid in determining the facts.

7. After the hearing, or if more than one hearing is held on the petition, the final hearing, the Board will serve a copy of its written decision on the petitioner, the Administrator and any intervener. The decision will include a brief statement of the Board's decision and the reasons supporting the decision. If the Board grants the petition, the Board will initiate appropriate regulation-making proceedings.

8. A decision of the Board to grant or deny a petition pursuant to this section is a final decision for the purpose of judicial review.

Sec. 14. *1. Except as otherwise provided in subsection 10, an interested person may petition the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board. Such a petition must include, without limitation:*

(a) The name and mailing address of the petitioner;

(b) The reason for the petition and a statement of the facts and law supporting the petition; and

(c) A clear and concise statement of the question to be decided by the Board and the relief sought by the petitioner.

2. A person filing such a petition shall file an original and five copies of the petition and any supporting documentation with the Board and, within 5 days after filing with the Board, serve one copy on the Administrator. Such a petition may be filed or served electronically, by personal service or by registered mail or certified mail, return receipt requested.

3. The Board may refuse to consider a petition which does not contain the information required by subsection 1 or was not filed or served pursuant to subsection 2.

4. The Administrator may file with the Board a response concerning the disposition of the petition not later than 45 days after service of the petition upon the Administrator and shall, within 5 days after filing such a response, serve a copy on the petitioner.

5. After providing written notice to the petitioner and the Administrator, the Board may:

(a) Conduct an informal hearing to determine any preliminary matters that may expedite the disposition of the petition and issue reasonable orders that govern the conduct of a hearing on the merits of the petition.

(b) Request that the petitioner submit additional information or arguments concerning the petition and allow the Administrator to file a response to any such additional information or arguments and, upon filing of such a response or at such other time as the Board may prescribe, provide a copy to the petitioner.

(c) Consider relevant decisions that have been issued by the Board which apply or interpret the statute, regulation or decision in question.

(d) Enter any reasonable order to assist in the review of the petition.

6. The Board may conduct a formal hearing on a petition or render a decision on the petition without a hearing based on the information submitted to the Board. The Board will

notify the petitioner and the Administrator when it determines that it has received sufficient information to determine how to proceed with the petition and, within 10 days thereafter, serve notice on the petitioner and the Administrator:

(a) Of the date of the formal hearing, which must not be sooner than 45 days after the date of service of the notice; or

(b) That the petition will be decided without a formal hearing.

7. The decision of the Board must be based upon and limited to the information provided to the Board pursuant to this section.

8. Within 45 days after the date that the formal hearing is concluded or the date that the Board gives notice that the petition will be decided without a formal hearing, the Board will issue a written declaratory order or advisory opinion disposing of the petition and mail a copy of the declaratory order or advisory opinion to the petitioner and the Administrator.

9. The Board will maintain a record that is indexed by subject matter of each declaratory order or advisory opinion issued by the Board.

10. A person may not petition the Board for the issuance of a declaratory order or advisory opinion concerning the applicability of a statute, regulation or decision of the Board if the applicability of the statute, regulation or decision is at issue in any administrative, civil or criminal proceeding in which the person is a party.

11. A decision of the Board relating to a petition filed pursuant to this section is a final decision for the purpose of judicial review.

Sec. 15. NAC 616B.770 is hereby amended to read as follows:

616B.770 As used in NAC 616B.770 to 616B.7714, inclusive, ***and sections 2 to 14, inclusive, of this regulation,*** unless the context otherwise requires, "Board" has the meaning ascribed to it in NRS 616B.545.

Sec. 16. NAC 616B.7702 is hereby amended to read as follows:

616B.7702 1. ~~[A]~~ ***The Board will approve or disapprove, in whole or in part:***

(a) Each claim ~~[against]~~ ***made for reimbursement from*** the Subsequent Injury Account for Self-Insured Employers established pursuant to NRS 616B.554 ***by a self-insured employer, if the claim is completed by the employer pursuant to the requirements set forth in this section; and***

(b) Any expenses of the self-insured employer related to each such claim that the Administrator has verified pursuant to the provisions of NAC 616B.707.

2. To submit a claim to the Board, a self-insured employer must ~~[be submitted]~~ ***:***

(a) Serve the claim, in writing ~~[to]~~ ***, on*** the Administrator ~~[for evaluation by the Board.~~

~~2. A self-insured employer who submits a claim pursuant to subsection 1 shall include with the claim:~~

~~(a) The]~~ ***;***

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

(c) Organize the claim in the manner prescribed in Form D-37; and

(d) Include with the claim all information ***which is*** necessary to establish that the claim should be paid from the Subsequent Injury Account for Self-Insured Employers ***.*** ~~[, including]~~

Such information must include, without limitation, the ***pertinent*** 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.]~~

3. A copy of ~~[the form]~~ ***Form D-37*** may be obtained from the Administrator ***or on the Internet website maintained by the Administrator*** at no cost.

~~[3. A claim submitted to the Administrator pursuant to subsection 1 must be organized in the manner prescribed in part 5 of Form D-37, Insurer's Subsequent Injury Checklist.]~~

4. A self-insured employer who submits a claim pursuant to subsection ~~[1]~~ ***2*** shall, upon the request of the Administrator:

(a) Allow the Administrator to inspect the records maintained by the self-insured employer concerning the claim; or

(b) Provide copies of those records to the Administrator.

5. The Administrator may refuse to process a claim that is incomplete or does not conform to the requirements of Form D-37, Insurer's Subsequent Injury Checklist. The Board will not deem a claim to be complete as a result of the claim being processed by the Administrator.

6. This section does not prohibit or limit the Administrator from requiring or obtaining from the self-insured employer or any other person any additional information relating to a claim submitted pursuant to subsection 2.

Sec. 17. NAC 616B.7704 is hereby amended to read as follows:

616B.7704 1. ~~[Within 45]~~ ***Except as otherwise provided in subsection 5 of NAC 616B.7702 or paragraph (b) or (c) of subsection 1 of section 2 of this regulation, not later than 60*** days after ***the date on which*** a claim is ~~[submitted to]~~ ***served on*** the Administrator pursuant to NAC 616B.7702, the Administrator shall:

(a) Submit to the Board a recommendation concerning the ~~[acceptance or denial]~~ ***approval or disapproval, in whole or in part,*** of:

(1) The claim; and

(2) ~~[The]~~ ***Any expenses of the*** self-insured ~~[employer's expenses]~~ ***employer*** related to the claim ~~[;]~~ ***that the Administrator has verified pursuant to NAC 616B.707;*** and

(b) Notify the self-insured employer who submitted the claim ***or the person designated pursuant to section 3 or 5 of this regulation, as applicable, to accept service on behalf of the self-insured employer*** of that recommendation.

2. The Administrator shall ~~[submit]~~ ***include*** with the recommendation the information necessary for the Board to evaluate the claim and the expenses related to the claim ~~[.]~~ ***, including, without limitation:***

(a) A statement of the issues of fact and law upon which the recommendation of the Administrator is based;

(b) A copy of each document upon which the Administrator based the recommendation; and

(c) A list of each witness, if any, whom the Administrator would likely call before the Board to support the recommendation, if contested.

3. Upon receipt of the recommendation of the Administrator, the Board will render a decision disposing of:

(a) The claim; and

(b) The self-insured employer's expenses related to the claim which have been verified by the Administrator after consideration in accordance with the provisions of NAC 616B.707.

4. When rendering a decision pursuant to subsection 3 or NAC 616B.7708, the Board will approve a claim and the expenses of a self-insured employer, in whole or in part, only if the employer proves by a preponderance of the evidence that all of the requirements of NRS 616B.557 or 616B.560, as applicable, have been satisfied.

Sec. 18. NAC 616B.7706 is hereby amended to read as follows:

616B.7706 1. If the Board ~~[denies]~~ ***initially disapproves, in whole or in part,*** a claim or any of the expenses related to the claim, the self-insured employer who submitted the claim may request a hearing before the Board by filing a written request with the Board's legal counsel within 30 days after the Board's ~~[attorney]~~ ***legal counsel*** notifies the self-insured employer of the decision of the Board.

2. The Board will conduct the hearing within 45 days after the request for a hearing is filed with the Board's legal counsel unless the Board grants a continuance. The Board may grant a continuance upon its own motion or, ~~[for good cause shown,]~~ ***pursuant to subsection 6,*** upon the request of the Administrator or the self-insured employer who submitted the claim.

3. The Board will conduct the hearing pursuant to the provisions of chapter 233B of NRS that relate to contested cases and, if practicable, the Board will apply the rules of procedure and evidence that apply to the district courts of this State. In such a hearing, the Board is not

bound by its initial disapproval, in whole or in part, of a claim or any of the expenses related to the claim.

4. Any objection to the conduct of the hearing, including, without limitation, an objection to the introduction of evidence, must be addressed to the Chair of the Board who, in consultation with the other members of the Board and the legal counsel for the Board, will rule upon the objection. If any evidence is excluded from the record, the party who is offering the evidence may make an offer of proof to the Chair of the Board. Such an offer of proof must be included in the record.

5. The Board will direct that an audio recording of the hearing be made, unless the Board on its own motion requires that a court reporter record the hearing or the self-insured employer requests in advance that the Board provide a court reporter for the hearing and the Board approves the request. If the Board provides a court reporter for the hearing upon the request of the self-insured employer, the self-insured employer shall pay all costs related to the services of the court reporter and all costs that are necessary to provide the Board with a copy of the transcript of the hearing.

6. A request for a continuance by the Administrator or a self-insured employer must:

(a) Be in writing;

(b) State the reasons supporting the request;

(c) Include a statement of any extensions of time or continuances previously granted;

(d) Not be made for the reason of delay and include a statement to that effect;

(e) Be filed by service upon the Board not later than 3 days before the date of the hearing unless extraordinary circumstances are shown or the Board finds that excusable neglect exists; and

(f) Be served upon each other party to the hearing upon filing with the Board.

7. A rebuttable presumption that the self-insured employer has given the Administrator all the information which the self-insured employer believes is necessary to support the claim and that the self-insured employer believes the claim is ready for disposition by the Board arises if a request for a continuance has been filed by service upon the Board pursuant to subsection 6 after:

(a) The self-insured employer has served a claim for reimbursement on the Administrator;

(b) The Administrator has completed a review of the claim and related information; and

(c) The Administrator has made a recommendation regarding the claim to the Board.

8. After the hearing, the Board will render a decision disposing of the claim based upon the record developed before the Board during the hearing and any continuation thereof.

9. If the Board disapproves a claim, in whole or in part, the Board may direct the legal counsel for the Board to prepare a written decision for the Board that includes findings of fact and conclusions of law for the decision. If the Board directs the legal counsel for the Board to prepare a written decision, the legal counsel shall submit the written decision to the Board for approval. If the Board approves the written decision, the Chair of the Board will sign the decision of the Board and the Board will serve its decision on the self-insured employer.

10. A decision of the Board pursuant to this section is a final decision for the purpose of judicial review.

Sec. 19. NAC 616B.7708 and 616B.771 are hereby repealed.

TEXT OF REPEALED SECTIONS

616B.7708 Acceptance or denial of claim or related expenses. (NRS 616A.400, 616B.554, 616B.557) If the Board conducts a hearing pursuant to NAC 616B.7706, the Board will accept or deny:

1. The claim; and

2. The self-insured employer's expenses related to the claim.

616B.771 Preparation of written order of Board upon denial of claim or related expenses; objections. (NRS 616A.400, 616B.554, 616B.557)

1. If, after conducting a hearing pursuant to NAC 616B.7706, the Board denies a claim or any of the expenses related to the claim, the Board will:

(a) Direct the legal counsel for the Board to prepare a written order which sets forth the decision of the Board and includes findings of fact and conclusions of law; and

(b) Deliver to the Board and the self-insured employer who submitted the claim or a representative thereof a copy of the order of the Board.

2. A self-insured employer may, within 10 days after receiving the order of the Board, file with the Board's legal counsel objections to the findings of fact or conclusions of law.