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

CHAPTER 616B - INDUSTRIAL INSURANCE: INSURERS; PROVISION OF COVERAGE

GENERAL PROVISIONS

PROOF OF COVERAGE

SELF-INSURED EMPLOYERS

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ASSOCIATIONS OF SELF-INSURED EMPLOYERS

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PRIVATE CARRIERS

ASSESSMENTS

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GENERAL PROVISIONS

NAC 616B.001 Definitions. (NRS 616A.400) 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.275, inclusive,

➥ have the meanings ascribed to them in those sections.

(Supplied in codification; A by Industrial Insurance System by R165-97, 12-31-97, eff. 1-1-98; A by Div. of Industrial Relations by R007-06, 6-1-2006)

NAC 616B.008 Insurers and employers: Disclosure of information. (NRS 616A.400**,** 616B.012**)**

1. To obtain information for the proper presentation of his or her claim in a proceeding held pursuant to chapters 616A to 616D, inclusive, of NRS, an injured employee or a person who has been authorized by the injured employee to represent him or her must deliver a written request to his or her insurer or employer. The insurer or employer shall provide such information to the injured employee or an authorized representative thereof within 30 days after receipt of the written request. If, at the time of receipt of the written request from the injured employee or an authorized representative, the requested information is in the possession of a third-party administrator, or an organization for managed care or a provider of health care with whom the insurer has contracted, the insurer shall take all reasonable steps necessary to obtain such information.

2. To obtain confidential information pursuant to subsection 3 of NRS 616B.012, the requesting agency, department or board must deliver to the insurer a written request that must:

(a) Be written on the official letterhead of the requesting agency, department or board;

(b) State the purpose for which the requesting agency, department or board will use the requested information;

(c) Contain all pertinent information available to the requesting agency, department or board to identify:

(1) The injured employee, including, without limitation, his or her name, social security number, date of birth and the date of the injury; or

(2) The employer, including, without limitation, his or her name, the name and address of the business, the names of the owners of the business and the employer's policy number; and

(d) Contain any other information that the insurer may need to process the request.

➥ The insurer may require additional information to process the request. The insurer shall provide the requested confidential information to the requesting agency, department or board within 30 days after receiving the written request.

3. If a request requires the insurer to report on more than one employer or more than one injured employee, the head of the requesting agency, department or board must sign the request. If a request requires the insurer to report on only one employer or injured employee, either the head of the requesting agency, department or board or a designated agent thereof must sign the request.

4. Upon receipt of a written request made pursuant to the provisions of subsection 5 of NRS 616B.012 by the chief executive officer of any law enforcement agency of this State, the Administrator will instruct the insurer to provide the information requested to the chief executive officer within 30 days after receiving the instructions from the Administrator. The insurer shall provide the information requested within 30 days after receipt of such an instruction from the Administrator.

5. Any fee charged for providing information pursuant to this section and NRS 616B.012 may not exceed 30 cents per page. If more than one copy of an item of information that is requested pursuant to this section is maintained in the records of an insurer, employer or third-party

administrator, or in the records of an organization for managed care or provider of health care with whom the insurer has contracted, no fee may be charged for any duplicate copy that is provided.

(Added to NAC by Div. of Industrial Relations by R208-97, eff. 4-17-98; A by R112-98, 12-18-98; R118-02, 9-7-2005)

NAC 616B.010 Maintenance of files for claims; address to be used for certain forms, correspondence and other documents. (NRS 616A.400)

1. Except as otherwise provided in subsection 2 and NAC 616B.013, copies of all claim files maintained by an insurer, third-party administrator or organization for managed care pursuant to chapters 616A to 617, inclusive, of NRS or regulations adopted pursuant thereto must be maintained in one of its offices located in this State.

2. Any Form C-4, Employee's Claim for Compensation/Report of Initial Treatment, submitted to an insurer, third-party administrator or organization for managed care that concerns a claim for compensation which is being administered pursuant to chapters 616A to 617, inclusive, of NRS or any regulations adopted pursuant thereto must be addressed to the insurer, third-party administrator or organization for managed care at one of its offices located in this State. All other correspondence and other documents submitted to an insurer, third-party administrator or organization for managed care that concern a claim for compensation that is being administered pursuant to chapters 616A to 617, inclusive, of NRS or regulations adopted pursuant thereto must be addressed to the insurer, third-party administrator or organization for managed care at one of its offices located in this State or to a facility located outside this State for the sole purpose of electronic scanning of the correspondence and documents to the claim file. All correspondence and documents shall be deemed to be officially received only if they have been so addressed.

(Added to NAC by Div. of Industrial Relations by R208-97, eff. 4-17-98; A by R105-00, 1-18-2001, eff. 3-1-2001; R132-14, 6-28-2016)

NAC 616B.013 Availability, location and inspection of files of claims of injured workers; report of findings to insurer. (NRS 616A.400)

1. An insurer or third-party administrator shall ensure that each file of any claim of an injured worker concerning an industrial injury which is filed in accordance with chapters 616A to 617, inclusive, of NRS or a regulation adopted pursuant thereto is available for inspection during regular business hours by:

(a) The injured worker;

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

(c) The Commissioner or a designee thereof; or

(d) The Administrator.

2. All files of the claims of injured workers concerning industrial injuries must be administered in this State and be available for inspection at an office of the insurer or third-party administrator in this State.

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

(Added to NAC by Div. of Industrial Relations by R105-00, 1-18-2001, eff. 3-1-2001; A by R007-06, 6-1-2006)

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NAC 616B.014 Transfer of file of claim; duties of insurer or third-party administrator who transfers or receives file. (NRS 616A.400, 616B.021)

1. If an insurer or third-party administrator transfers the file of a claim to another insurer or third-party administrator, the insurer or third-party administrator who transfers the file shall:

(a) Provide in a usable format to the insurer or third-party administrator who receives the file the information necessary to administer the claim.

(b) Provide in a usable format to the insurer or third-party administrator who receives the file the information necessary to comply with all reporting requirements and requests imposed by law.

(c) Continue to pay all compensation due the claimant until the insurer or third-party administrator who receives the file provides notice in writing to the insurer or third-party administrator who transferred the file that an account to pay such compensation has been established and funded.

(d) Provide to the insurer or third-party administrator who receives the file a printed report of all claims which are open on the date on which the file is transferred. The insurer or third-party administrator who transfers the file and the insurer or third-party administrator who receives the file shall retain a copy of the report for as long as necessary to assign responsibility for any failure to pay compensation, but in no event for a period of less than 2 years after the date on which the file is transferred. The report must be delivered to the insurer or third-party administrator who receives the file on or before the date on which the file is transferred and must include for each claim:

(1) The current status of the claim;

(2) For any compensation due within 90 days after the date on which the file is transferred, the dates on which the compensation is due and the anticipated period for which the compensation is due;

(3) Any pending issues and determinations;

(4) A brief summary of the history and projected outcome of the claim; and

(5) Information sufficient to enable the insurer or third-party administrator who receives the file to make timely payment of compensation and to continue administering the claims.

(e) Provide notice of the transfer by mail to:

(1) The injured employee whose claim is being transferred;

(2) The attorney or other authorized representative of the injured employee;

(3) Any person who is a provider of health care for the injured employee;

(4) Any person who is performing a rating evaluation of the injured employee;

(5) Any person who is administering the claim which is being transferred; and

(6) The Administrator and the Commissioner.

(f) Not later than 3 days after receiving a notice or other legal documentation relating to a contested claim that is before a hearing officer, appeals officer or court of competent jurisdiction:

(1) Notify, in writing, the sender of the notice or other legal documentation of the name, address and telephone number of the insurer or third-party administrator who receives the file; and

(2) Forward the notice or other legal documentation to the insurer or third-party administrator who receives the file.

2. An insurer or third-party administrator who receives a file that is transferred from another insurer or third-party administrator shall:

(a) Within 30 days after the date of the transfer, review any open claim relating to the file and determine the action to be taken with regard to each claim.

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(b) In a timely manner, pay all compensation set forth in the report described in paragraph (d) of subsection 1 unless the insurer or third-party administrator issues a written determination that such compensation is not due, which written determination must set forth the right to appeal by the injured employee.

(c) Take any other action set forth in the report described in paragraph (d) of subsection 1 and any other action necessary to ensure the timely and efficient administration of claims and payment of compensation and other benefits.

(Added to NAC by Div. of Industrial Relations by R130-14, eff. 9-9-2016)

NAC 616B.016 Reports of claims. (NRS 616A.400)

1. Upon the request of the Administrator, each insurer shall file a report with the Administrator which contains the following information:

(a) For claims other than claims for an occupational disease:

(1) The number of new claims filed.

(2) The number of claims for accident benefits only that were accepted by the insurer.

(3) The number of claims for benefits for lost time that were accepted by the insurer.

(4) The number of compensable fatalities.

(5) The number of claims that were denied by the insurer.

(b) For claims for an occupational disease:

(1) The number of new claims filed.

(2) The number of claims for accident benefits only that were accepted by the insurer.

(3) The number of claims for benefits for lost time that were accepted by the insurer.

(4) The number of compensable fatalities.

(5) The number of claims that were denied by the insurer.

(c) The number of requests to reopen a claim.

(d) The number of requests to reopen a claim that were denied by the insurer.

(e) The number of claims for accident benefits only that were reopened by the insurer.

(f) The number of claims for benefits for lost time that were reopened by the insurer.

(g) The number of injured employees who received benefits for a permanent partial disability.

(h) The number of injured employees who received benefits for a permanent partial disability in a lump sum.

(i) ***The number of claims for which benefits for a permanent total disability were paid.***

(j) The number of claims for which death benefits were paid.

(k) The number of injured employees who received benefits for vocational rehabilitation.

[~~(j)~~] ***(l)*** The number of injured employees who received benefits for vocational rehabilitation in a lump sum.

[~~(k)~~] ***(m)*** The number of claims closed pursuant to subsection 1 of NRS 616C.235.

[~~(l)~~] ***(n)*** The number of claims closed pursuant to subsection 2 of NRS 616C.235.

[~~(m)~~] ***(o)*** The number of claims open at the end of the fiscal year.

[~~(n)~~] ***(p)*** The total expenditures for claims reported in paragraphs [~~(k) and (l).~~ ~~(o)~~] ***(m) and (n).***

(q) Expenditures on claims for:

(1) A temporary total disability.

(2) A temporary partial disability.

(3) A permanent total disability.

(4) A permanent partial disability.
(5) Benefits for survivors.
(6) Burial expenses.
(7) Travel and per diem expenses.
(8) All medical expenses.
(9) Vocational rehabilitation, including, without limitation, expenditures for:
(I) Vocational rehabilitation maintenance.
(II) The payment of compensation in a lump sum in lieu of vocational rehabilitation services.
(III) Program expenses.
(IV) Administrative expenses.
(V) Other expenses relating to vocational rehabilitation.

[~~(p)~~] *(r)* Amounts recovered:
(1) By subrogation of claims.
(2) From the:
(I) Subsequent Injury Account for Self-Insured Employers established pursuant to NRS 616B.554;
(II) Subsequent Injury Account for Associations of Self-Insured Public or Private Employers established pursuant to NRS 616B.575; or
(III) Subsequent Injury Account for Private Carriers established pursuant to NRS 616B.584.
(3) ***From the Fund for Workers' Compensation and Safety established by NRS 616A.425 for increases in compensation for a permanent total disability pursuant to NRS 616C.266 and increases in death benefits pursuant to NRS 616C.268.***
(4) From other sources.

[~~(q)~~] *(s)* Any other information requested by the Administrator.

2. The information required pursuant to subsection 1 must, except as otherwise requested by the Administrator, include information concerning any administrative activity during the previous fiscal year relating to:
(a) A claim for an injury that occurred during that year; and
(b) Any other claims, regardless of when the injury occurred.

3. As used in this section:
(a) "Claim for accident benefits only" means a claim in which the benefits received by the injured employee or his or her dependents for the duration of the claim did not include benefits for a temporary total disability, temporary partial disability or permanent total disability.
(b) "Claim for benefits for lost time" means a claim in which the benefits received by the injured employee or his or her dependents for the duration of the claim included benefits for a temporary total disability, temporary partial disability or permanent total disability.
(c) "Vocational rehabilitation maintenance" has the meaning ascribed to it in NRS 616C.575.

(Added to NAC by Div. of Industrial Relations by R105-00, 1-18-2001, eff. 3-1-2001; A by R134-20, 8-22-2023)

NAC 616B.018 Notice to Administrator of accident or exposure to disease-causing agent or fatality from accident or exposure. (NRS 616A.400)

1. Within 30 days after an insurer receives notice that an employee has been:

(a) Involved in an accident; or

(b) In close proximity to or has had contact with a disease-causing agent that may have a harmful effect on the employee,

➥ the insurer shall notify the Administrator if the accident resulted in injury to, or the exposure to the disease-causing agent affected or is expected to affect, two or more persons.

2. Within 48 hours after the insurer receives notice of a fatality that resulted from:

(a) An accident that an employee was involved in; or

(b) The close proximity to or contact with a disease-causing agent by the employee,

➥ the insurer shall notify the Administrator of the fatality by submitting Form D-21, Fatality Report, to the Administrator.

(Added to NAC by Div. of Industrial Relations by R105-00, 1-18-2001, eff. 3-1-2001)

NAC 616B.021 Payment of compensation, benefit penalty, or penalty for unreasonable delay or refusal to pay claim. (NRS 616A.400**)** 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, a benefit penalty or a penalty imposed pursuant to NRS 616C.065 to:

(a) The claimant; or

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

2. Make a check for compensation, a benefit penalty or a penalty imposed pursuant to NRS 616C.065 available to the claimant or, if directed in writing by the claimant, the attorney or other authorized representative of the claimant in the office of the insurer or third-party administrator.

(Added to NAC by Div. of Industrial Relations by R105-00, 1-18-2001, eff. 3-1-2001; A by R007-06, 6-1-2006)

NAC 616B.023 Determination of value of meal as wages. (NRS 616A.400**)** For the purpose of determining the average monthly wage used in the calculation of disability compensation, 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 the employer. Meals will be valued by the cost to the employer per meal for the purposes of determining payroll.

(Added to NAC by Div. of Industrial Relations by R112-98, 12-18-98, eff. 7-1-99)

NAC 616B.029 Report of change in ownership of business. (NRS 616A.400**)** An employer covered by a policy for workers' compensation shall immediately report to his or her insurer any change in the ownership of the ongoing business.

(Added to NAC by Div. of Industrial Relations by R112-98, 12-18-98, eff. 7-1-99)

PROOF OF COVERAGE

NAC 616B.100 Definitions. (NRS 616A.400**)** As used in NAC 616B.100 to 616B.148, inclusive, unless the context otherwise requires, the words and terms defined in NAC 616B.106, 616B.109 and 616B.118 have the meanings ascribed to them in those sections.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R118-02, 9-7-2005)

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NAC 616B.106 "Binder" defined. (NRS 616A.400) "Binder" has the meaning ascribed to it in NRS 687B.015.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99)

NAC 616B.109 "Designated agent" defined. (NRS 616A.400) "Designated agent" means the agent who is authorized by the Administrator to receive proof of coverage from a private carrier or an association, or its representative, and submit that proof of coverage to the Administrator.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R071-99, 10-29-99, eff. 1-1-2000)

NAC 616B.118 "Proof of coverage" defined. (NRS 616A.400) "Proof of coverage" means the information relating to the verification of industrial insurance coverage for employers in this State.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99)

NAC 616B.121 Adoption by reference of certain publications. (NRS 616A.400) The Administrator hereby adopts by reference the following publications:

1. ~~[*EDI Implementation Guide for Proof of Coverage*, which is published by the International Association of Industrial Accident Boards and Commissions. A copy of the publication may be obtained from the International Association of Industrial Accident Boards and Commissions, 7780 Elmwood Avenue, Suite 207, Middleton, Wisconsin 53562, for the price of $195, or may be obtained free of charge by members at the Internet address **http://www.iaiabc.org**.~~

~~2.]~~ *Policy and Proof of Coverage Reporting Guidebook*, which is ~~[published]~~ ***issued*** by the National Council on Compensation Insurance. ~~[A copy of the publication]~~ ***Access to the Guidebook*** may be obtained ~~[from NCCI Holdings, Inc., Customer Service Center, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487, or]~~ at the Internet address **http://www.ncci.com**, free of charge ~~[for affiliates or for the price of $47 for nonaffiliates.~~

~~3. *Basic Manual for Workers Compensation and Employers Liability Insurance*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained from NCCI Holdings, Inc., Customer Service Center, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487, or at the Internet address **http://www.ncci.com**, for the price of $125 for affiliates and $250 for nonaffiliates.~~

~~4. *Forms Manual of Workers Compensation and Employers Liability Insurance*, which is published by the National Council on Compensation Insurance. A copy of the publication may be obtained from NCCI Holdings, Inc., Customer Service Center, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487, or at the Internet address **http://www.ncci.com**, for the price of $160 for affiliates and $325 for nonaffiliates.~~

~~5.]~~ ***to customers of that organization who:***

(a) Are authorized to report data to the organization; and

(b) Have a user identification and password to access the Guidebook at that Internet address. A user identification and password may be obtained by contacting customer service for the National Council on Compensation Insurance.

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2. *Electronic Transmission User's Guide*, which is [~~published~~] ***issued*** by the National Council on Compensation Insurance. [~~A copy of the publication~~] ***Access to the Guide*** may be obtained [~~, free of charge,~~] at the Internet address **http://www.ncci.com** [.

6.] ***, free of charge to customers of that organization who:***

(a) Are authorized to report data to the organization; and

(b) Have a user identification and password to access the Guide at that Internet address. A user identification and password may be obtained by contacting customer service for the National Council on Compensation Insurance.

3. *WCIO Workers Compensation Data Specifications Manual*, which is maintained by the Workers Compensation Insurance Organizations. A copy of the publication may be obtained, free of charge, at the Internet address **http://www.wcio.org**.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R118-02, 9-7-2005; R130-14, 9-9-2016; R134-20, 8-22-2023)

NAC 616B.124 Private carrier: Duty to submit proof to designated agent. (NRS 616A.400**,** 616B.460**,** 616B.461**)** For the purposes of complying with the provisions of subsection 2 of NRS 616B.460 and NRS 616B.461, a private carrier shall submit proof of coverage to the designated agent.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R071-99, 10-29-99, eff. 1-1-2000; R118-02, 9-7-2005)

NAC 616B.127 Private carrier: Period for submission of proof; duty upon replacement of binder. (NRS 616A.400, 616B.461**)**

1. A private carrier shall submit proof of coverage to the designated agent within 15 days after the effective date of the:

(a) Issuance of a policy or binder of industrial insurance;

(b) Renewal of a policy of industrial insurance;

(c) Reinstatement of a policy of industrial insurance;

(d) Reissuance of a policy of industrial insurance;

(e) Cancellation of a policy of industrial insurance;

(f) Nonrenewal of a policy of industrial insurance; or

(g) Issuance of any endorsement of a policy of industrial insurance which materially affects the proof of coverage required by NAC 616B.100 to 616B.148, inclusive.

2. If a binder is submitted as proof of coverage pursuant to paragraph (a) of subsection 1 and the binder is replaced by a policy of industrial insurance, proof of coverage for the policy must be submitted to the designated agent before the expiration of the binder.

3. A private carrier shall submit proof of coverage to the designated agent within 15 days after receiving notice that an employer has changed insurers or has cancelled his or her policy with that carrier.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R071-99, 10-29-99, eff. 1-1-2000; R118-02, 9-7-2005)

NAC 616B.133 Private carrier: Methods for submission of proof and other information. (NRS 616A.400**,** 616A.417**,** 616B.461**)**

[~~1.~~] A private carrier shall submit proof of coverage to the designated agent by:

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[~~(a)~~] ***1.*** Electronic transmission [~~;~~] ***in the format specified by the Workers Compensation Policy Reporting Specifications in the WCIO Workers Compensation Data Specifications Manual, as adopted by reference in NAC 616B121;*** or

[~~(b)~~] ***2.*** The [~~United States Postal Service or any other mail delivery service.~~

~~2. If the private carrier does not use Form D-41, International Association of Industrial Accident Boards and Commissions POC 1, to submit:~~

~~(a) Information relating to a binder, it shall submit Form D-48, Proof of Coverage Notice, and a schedule of the names, addresses and federal employer identification numbers of the employers covered by the binder.~~

~~(b) Information relating to a policy, it shall submit Form D-49, Information Page.~~

~~(c) Information relating to the termination, cancellation or reinstatement of a policy, it shall submit Form D-50, Policy Termination, Cancellation and Reinstatement Notice.~~

~~3. As used in this section, "electronic transmission" means the sending of information by electronic means in the manner prescribed by the designated agent, including, without limitation, by a magnetic tape, cartridge, mainframe or personal computer.~~] ***Policy Data Collection Tool of the National Council on Compensation Insurance, which is available at the Internet address http://www.ncci.com, free of charge to customers of that organization who:***

(a) Are authorized to report data to the organization; and

(b) Have a user identification and password to access the Tool at that Internet address. A user identification and password may be obtained by contacting customer service for the National Council on Compensation Insurance.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R071-99, 10-29-99, eff. 1-1-2000; R105-00, 1-18-2001, 3-1-2001; R118-02, 9-7-2005; R134-20, 8-22-2023)

NAC 616B.136 Employer: Provision of proof to insurer and Administrator; notification of previous insurer of cancellation of former policy. (NRS 616A.400**,** 616B.460**)**

1. An employer shall, upon request, provide proof of coverage to its insurer and to the Administrator in the manner prescribed by the Administrator. If the employer fails to provide that information to the insurer, the insurer may notify the Administrator of the failure of the employer to provide the information.

2. If an employer changes insurers, the employer shall notify the previous insurer of the cancellation of the former policy within 10 days after the effective date of the change.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R118-02, 9-7-2005)

NAC 616B.139 Designated agent: Fee for certain services; provision of instructions for submission of proof. (NRS 616A.400**,** 616B.461**)** The designated agent may charge a private carrier a fee in an amount that does not exceed the cost of receiving, processing and submitting proof of coverage required by the Administrator. The designated agent shall provide to the private carrier, at no cost, instructions for submitting proof of coverage.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R071-99, 10-29-99, eff. 1-1-2000; R118-02, 9-7-2005)

NAC 616B.148 Notification of Administrator regarding operation of employer without insurance. (NRS 616A.400**)** An insurer shall, within 5 working days after it obtains information

that an employer may have operated in this State without industrial insurance, give written notice of that fact to the Administrator.

(Added to NAC by Div. of Industrial Relations by R071-99, eff. 10-29-99; A by R118-02, 9-7-2005)

SELF-INSURED EMPLOYERS

NAC 616B.400 Purpose. (NRS 616A.400, 679B.130**)** The purpose of NAC 616B.400 to 616B.496, inclusive, is to set forth:

1. The standards and procedures of the Commissioner for certifying self-insured employers; and
2. The regulations of the Administrator governing the operation of self-insured employers' programs for providing workers' compensation, to provide adequate protection for the self-insured employers, their employees and the State of Nevada.

[Comm'r of Insurance, PC-25 § 2, eff. 8-6-80]—(NAC A by Dep't of Industrial Relations, 10-26-83; A by Comm'r of Insurance, 1-24-92; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.403 Definitions. (NRS 679B.130**)** As used in NAC 616B.400 to 616B.496, inclusive, unless the context otherwise requires, the terms defined in chapters 616A to 617, inclusive, of NRS have the meanings ascribed to them therein. In addition, the words and terms defined in NAC 616B.406 to 616B.418, inclusive, have the meanings ascribed to them in those sections.

[Comm'r of Insurance, PC-25 § 3, eff. 8-6-80]—(NAC A 1-4-91; 11-1-96; R119-07, 12-4-2007; R095-17, 2-27-2018)

NAC 616B.406 "Annual claims expenditures" defined. (NRS 616B.300, 679B.130**)** "Annual claims expenditures" means the total amount of money actually disbursed in a 12-month period by or on behalf of an employer as benefits against all past and current industrial insurance claims.

[Comm'r of Insurance, PC-25 § 4, eff. 8-6-80]—(NAC A by R095-17, 2-27-2018)—(Substituted in revision for NAC 616.140)

NAC 616B.412 "Expected annual incurred cost of claims" defined. (NRS 616B.300, 679B.130**)** As used in NRS 616B.300, the Commissioner will interpret "expected annual incurred cost of claims" to mean the average of the annual claims expenditures of the employer during the immediately preceding 36 months plus any estimated additional costs, including, without limitation, future anticipated costs and the cost of administering the program of self-insurance.

[Comm'r of Insurance, PC-25 § 7, eff. 8-6-80]—(NAC A by R095-17, 2-27-2018)—(Substituted in revision for NAC 616.148)

NAC 616B.415 "Governmental employer" defined. (NRS 679B.130**)** "Governmental employer" means the State, any county, city or school district, and all public and quasi-public corporations in this State.

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

(Added to NAC by Comm'r of Insurance, eff. 1-4-91)—(Substituted in revision for NAC 616.149)

NAC 616B.418 "Program of self-insurance" defined. (NRS 616A.400**,** 679B.130**)** "Program of self-insurance" means a program of self-insured workers' compensation established pursuant to chapters 616A to 617, inclusive, of NRS for which an employer has obtained a certificate from the Commissioner.

[Comm'r of Insurance, PC-25 § 10, eff. 8-6-80]—(NAC A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.424 Eligibility to self-insure. (NRS 616B.300**,** 679B.130**)** In order to be eligible to establish a program of self-insurance, an employer must:

1. Except as otherwise provided in NAC 616B.427 and 616B.433, be a legally qualified business entity having a tangible net worth of at least $2,500,000.
2. If other than a governmental employer, be licensed to do business in Nevada.
3. Make the deposit required by NAC 616B.436. If the business has been operated at a loss in any of the past 3 years, the Commissioner may increase the required deposit by a minimum amount of 20 percent of the deposit.
4. Provide a complete copy of a policy of excess insurance to the Commissioner within 60 days after the issuance of the policy as evidence of excess insurance in accordance with NRS 616B.300. The policy must, without limitation:

(a) Provide coverage for losses in excess of a self-insured retention of not less than $100,000;

(b) Contain a provision requiring at least 60 days' notice of cancellation; and

(c) Contain a provision which states that the bankruptcy or insolvency of the self-insured employer will not relieve the insurer of its duties under the policy and that reimbursement will be made by the insurer as if the self-insured employer had not become bankrupt or insolvent.

5. Present evidence that the business has administrative resources which will enable it to timely report, administer and settle all claims. The resources which are necessary include, without limitation:

(a) The ability of the employer to know and correctly apply the worker's compensation laws and regulations of this State;

(b) A qualified, licensed and competent administrator of the program who is located in Nevada;

(c) An existing and feasible plan for the program of self-insurance which provides for an immediate and personal response to an employee's claim;

(d) A plan for the administration of claims which includes written instructions or examples of how to apply the worker's compensation law to ensure continuity of service to employees as well as ease of audit by company personnel and regulatory agencies;

(e) The ability to communicate the plan for the administration of the program, including, without limitation, such topics as benefits, filing procedures and the right of appeal, to the appropriate managers of the business and to all employees; and

(f) Standards of performance for the administration of the program of self-insurance.

[Comm'r of Insurance, PC-25 § 11, eff. 8-6-80]—(NAC A 1-4-91; R095-17, 2-27-2018)—(Substituted in revision for NAC 616.156)

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NAC 616B.427 Governmental employer: Qualification as self-insured employer. (NRS 616B.300, 679B.130**)**

1. To determine whether a governmental employer has the financial ability to qualify as a self-insured employer, the Commissioner will consider the use of fund accounting and waive the requirement for a tangible net worth found in NAC 616B.424. All other requirements for qualification apply to the governmental entity.

2. In addition to the deposit required by NRS 616B.300, a governmental entity that does not meet the requirements of subsection 1 shall:

(a) Comply with the requirements of Statement No. 10 of the Governmental Accounting Standards Board, a copy of which may be obtained from the Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116, or from the Internet website **http://www.gasb.org**, at a cost of $24 or an electronic copy of which may be obtained at no cost from the Internet website **http://www.gasb.org**; or

(b) Set aside, in a special reserve account, an amount equal to the deposit it made with the Commissioner to assure payment of claims. This account must be held in trust for the payment of claims, and all interest and income earned must be credited to that account. If securities are used for this account, then the form of the securities must be submitted to the Commissioner for approval.

(Added to NAC by Comm'r of Insurance, eff. 1-4-91; A by R063-06, 6-28-2006; R039-08, 6-17-2008; R032-12, 9-14-2012; R071-16, 11-2-2016)

NAC 616B.430 Application to self-insure; fee. (NRS 616B.300, 679B.130**)**

1. Every employer desiring to qualify as a self-insured employer must apply to the Commissioner on forms provided by the Commissioner. The application must be signed by an executive officer of the corporation, include audited financial statements of the business entity covering the 3 years immediately preceding the date of the application and be accompanied by an application fee of $200 for each application submitted. The fee will not be refunded.

2. A separate application and filing fee must be submitted for each separately administered program.

[Comm'r of Insurance, PC-25 § 12, eff. 8-6-80]—(NAC A 1-4-91)

NAC 616B.433 Determination of tangible net worth of employer; disallowance of certain assets; authority of Commissioner to accept additional deposit. (NRS 616B.300, 679B.130**)**

1. To enable the Commissioner to determine the tangible net worth of a self-insured employer, the employer shall submit to the Commissioner all financial statements and accompanying footnotes, including an independent auditor's opinion. Each statement must be audited.

2. The following factors must be used to review the audited financial statements:

(a) The auditor's opinion.

(b) The various financial ratios, including working capital and cash flow.

(c) Any footnotes related to:

(1) A contingency or commitment;

(2) A party;

(3) A bad debt; or

(4) The restructuring of an operation.

3. If any of the factors in subsection 2 are deemed material, the Commissioner may deny certification.

4. In determining the tangible net worth of a self-insured employer, the Commissioner will disallow as assets of the employer:

(a) Goodwill; and

(b) Any other item listed as an asset that is deemed unacceptable by the Commissioner because it cannot be justified or does not directly support the ability of the employer to pay a claim.

5. If, after accounting for the factors in subsection 2, the Commissioner determines that the employer's financial statements do not demonstrate the tangible net worth otherwise required by subsection 1 of NAC 616B.424, but demonstrate that the employer has sufficient financial resources to make certain the prompt payment of all compensation that may be due under chapters 616A to 616D, inclusive, or chapter 617 of NRS, the Commissioner may accept as an additional deposit any instrument described in NAC 616B.436 in the amount of $2,500,000 in lieu of the requirement set forth in subsection 1 of NAC 616B.424. The deposit described in this subsection must be separate from the deposit required pursuant to NRS 616B.300.

(Added to NAC by Comm'r of Insurance, eff. 1-4-91; A by R112-04, 8-25-2004; R119-07, 12-4-2007; R072-16, 11-2-2016)

NAC 616B.434 Determination of net cash flows of employer. (NRS 616B.300, 679B.130**)** For the purpose of determining net cash flows pursuant to paragraph (b) of subsection 1 of NRS 616B.300, a self-insured employer shall submit to the Commissioner:

1. Copies of the self-insured employer's last three audited financial statements submitted pursuant to NRS 616B.336; and

2. Any additional information or documents requested in writing by the Commissioner.

(Added to NAC by Comm'r of Insurance by R119-07, eff. 12-4-2007)

NAC 616B.436 Required deposit: Form; priority of payment in case of loss; administration of certain securities; evaluation of certain securities and assets. (NRS 616B.300, 679B.130**)**

1. Except as otherwise provided in subsection 3 of NRS 616B.300, a self-insured employer shall meet the deposit requirement of the self-insured program of workers' compensation by depositing with the Commissioner any of the following:

(a) Cash.

(b) A savings certificate, certificate of deposit or investment certificate. Any such savings certificate, certificate of deposit or investment certificate must be from a financial institution that is insured federally, made payable to the Commissioner of Insurance and the employer.

(c) A surety bond, if it is written by an insurer authorized and licensed to transact the business of surety insurance in this State.

(d) A letter of credit that meets the standards set forth in NAC 616B.439.

(e) Securities guaranteed by the full faith and credit of the United States.

(f) Any combination of paragraphs (a) to (e), inclusive.

➥ Priority of payment in case of loss must be in the order stated in this subsection.

2. Securities guaranteed by the full faith and credit of the United States that are deposited in accordance with this section will be held in trust and administered by the Commissioner, unless:

(a) The self-insured employer elects to use the services of a custodial financial institution for trust investments;

(b) The custodial financial institution holds and administers the securities on behalf of the Commissioner under an agreement approved by the Commissioner; and

(c) The custodial financial institution provides monthly statements of the account to the Division of Insurance of the Department of Business and Industry.

➥ A deposit made pursuant to this subsection may not be withdrawn except upon written order of the Commissioner. A deposit must be revised on or before June 30 each year or as the Commissioner determines to be appropriate and necessary.

3. If necessary, the Commissioner may select a competent specialist to make an evaluation:

(a) Before accepting for deposit any security of the United States or asset; or

(b) At any time after the security of the United States or asset is deposited with the Commissioner or held by a custodial financial institution in this State.

➥ The self-insured employer shall pay the cost of any such evaluation.

[Comm'r of Insurance, PC-25 § 13, eff. 8-6-80]—(NAC A 1-4-91; 1-24-92; 3-22-96; R112-04, 8-25-2004; R102-09, 1-28-2010; R095-17, 2-27-2018)

NAC 616B.439 Letter of credit: Requirements. (NRS 616B.300, 679B.130**)**

1. A letter of credit submitted by a self-insured employer to meet the requirements for his or her deposit pursuant to NAC 616B.436 must:

(a) Include a clause stating that no document other than the demand for payment under the terms of the letter is necessary for payment.

(b) Be irrevocable.

(c) Be valid for at least 1 year. The letter must not expire unless written notice is given by the issuer. It must be renewable automatically, unless the issuer gives written notice to the Commissioner and the employer at least 90 days before the expiration date.

(d) Be issued by a bank chartered by this State or a bank that is a member of the United States Federal Reserve System and has been approved by the Commissioner.

(e) Include a clause stating that it is not subject to any conditions or qualifications outside the letter. The letter may be the individual obligation of the financial institution issuing it, but must not be contingent upon the institution's ability to perfect any lien or security interest. The letter must not contain references to any other agreements, documents or persons.

(f) Include a clause stating that the obligation of the financial institution under the letter is not contingent upon reimbursement.

2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations. If such a section is present it must be marked clearly to indicate that the information is for internal identification only, and does not affect the terms of the letter or the financial institution's obligations under the letter.

(Added to NAC by Comm'r of Insurance, eff. 1-4-91; A by R139-99, 1-27-2000)

NAC 616B.442 Maintenance and review of documents to ensure adequacy of security deposit. (NRS 616B.300, 679B.130**)** A self-insured employer shall maintain such documents as are necessary to ensure the adequacy of the security deposit required by NRS 616B.300. To determine the accuracy of the recorded and reported amounts for claim reserves, the self-insured employer shall maintain and the Commissioner will review:

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1. A list of open and closed claims, which include:

(a) The claimant's name;

(b) The number assigned to the claim;

(c) The date of the injury;

(d) The status of the claim, including whether it is open or closed;

(e) The total reserve amount for medical and indemnity for each claim;

(f) The total amount paid for medical costs and indemnity for each claim;

(g) The total reserve balance for medical costs and indemnity for each claim;

(h) The total incurred cost of each claim;

(i) The total for all claims of payments for medical costs and indemnity; and

(j) The total of reserve balances for all open claims, including future liabilities for medical costs and indemnity.

2. A list of claims covered or paid by excess insurance.

3. The cost of administration of claims.

(Added to NAC by Comm'r of Insurance, eff. 1-4-91)—(Substituted in revision for NAC 616.163)

NAC 616B.445 Authority of Commissioner to require guarantee of indemnification. (NRS 616B.300**,** 679B.130**)** A guarantee of indemnification may be required by the Commissioner from:

1. A parent corporation for its subsidiaries or affiliates;

2. Any partner for a partnership; or

3. An owner for a sole proprietorship, whether or not the indemnitor is seeking a certificate of self-insurance for himself or herself.

(Added to NAC by Comm'r of Insurance, eff. 1-4-91)—(Substituted in revision for NAC 616.165)

NAC 616B.448 Administration of self-insurance by employer or independent contractor. (NRS 616A.400**,** 679B.130**)**

1. A self-insured employer shall at all times maintain adequate resources for the administration of his or her program of self-insurance. After the program is established, the adequacy of the resources and standards of performance of the self-insured employer for the program will be evaluated by the Commissioner and the Administrator, or a representative of either of them, on the basis of:

(a) The self-insured employer's promptness in filing reports of accidents and occupational disease;

(b) The self-insured employer's promptness in making first payments in cases of uncontested claims;

(c) The percentage of contested claims;

(d) The number of injured employees who are reemployed or rehabilitated; and

(e) The delay between the termination of compensation for temporary disabilities and the payment of compensation for permanent partial disabilities.

2. A self-insured employer may contract with another person or entity for the administration of his or her program of self-insurance. The acts of a person or entity in carrying out that administration shall be deemed the acts of the self-insured employer for the purposes of NAC

616B.400 to 616B.496, inclusive, and NRS 616D.120, and the self-insured employer is at all times responsible for compliance with chapters 616A to 618, inclusive, of NRS unless specifically excepted by the provisions on self-insurance in those chapters.

3. The self-insured employer shall inform the Commissioner and the Administrator, or a representative of either of them, of the names, titles and business addresses of the persons or entity with whom he or she contracts to administer his or her program of self-insurance and the location or locations of the records required to be kept pursuant to NAC 616B.400 to 616B.496, inclusive. Before any change is made in the name, title or address of a person or entity administering the employer's program or any change is made in the location of records, the intended change must be reported in writing to the Commissioner and the Administrator or a designated agent thereof.

4. A self-insured employer shall not administer a program of self-insurance from a location outside this State.

[Comm'r of Insurance, PC-25 § 16 + part § 26, eff. 8-6-80]—(NAC A by Div. of Industrial Insurance Regulation, 10-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.451 Certificate of authority covering self-insured employer and any subsidiary or affiliated corporation: Procedure; requirements. (NRS 616B.312, 679B.130)

1. A self-insured employer may request that the Commissioner issue one certificate of authority to cover the employer and any subsidiary or affiliated corporation. In reviewing such a request, the Commissioner will apply the standards of NAC 616B.424 to all of the subsidiaries and corporations as if they were a single entity.

2. The businesses that wish to be covered by one certificate shall file a statement with the Commissioner that lists the owners of the businesses and the percentage of the businesses held by each owner and that verifies that the operations of each business are controlled by the same owners. The Commissioner may require each business, or the owner of each business, or both, to indemnify the other businesses or owners who will be covered by the certificate and hold them harmless from liability for any claim for compensation filed pursuant to chapters 616A to 617, inclusive, of NRS.

3. The Commissioner may issue one certificate to cover a business and one or more subsidiaries or affiliated corporations if:

(a) The operations of each business are controlled by the same natural persons or corporation; and

(b) An independent auditor determines that there is sufficient similarity in the control of the businesses to present a combined financial statement for all of the businesses that will be covered by the certificate.

4. A certificate issued by the Commissioner pursuant to this section will list the names and locations of all the businesses covered by the certificate.

5. If the self-insured employer later requests that a new business or a new location be added to the certificate, the Commissioner will review that request in accordance with this section. If approved, a new certificate will be issued to the self-insured employer and list all covered businesses or locations.

6. As used in this section, "affiliated corporation" means a corporation that directly or indirectly, through one or more intermediaries, is controlled by, or is under common control with, the self-insured employer.

(Added to NAC by Comm'r of Insurance, eff. 1-4-91; A 3-22-96; R124-20, 4-14-2021)—(Substituted in revision for NAC 616.169)

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NAC 616B.460 Annual report: Filing; signature; failure to file. (NRS 679B.130)

1. Every self-insured employer must file an annual report on forms supplied by the Commissioner as a condition to the continuance of his or her certificate of authority to self-insure.

2. The report must be filed on or before September 30, or within an additional time allowed by the Commissioner, and cover the preceding fiscal year.

3. Unless otherwise approved by the Commissioner, the report must be signed by a person administering the program of self-insurance and by an officer or authorized employee of the self-insured employer.

4. A self-insured employer will be assessed a penalty of $50 for each day in which he or she has failed to file the annual report as required by this section.

5. The Commissioner may require a self-insured employer to submit quarterly reports in addition to the annual report.

[Comm'r of Insurance, PC-25 § 21, eff. 8-6-80]

NAC 616B.463 Estimated expenditures for claims; calculation of reserve for reopened claims. (NRS 679B.130)

1. A self-insured employer must calculate the estimated expenditure for each claim reported in the annual report. The estimated expenditure for a claim is the total liability attributable to the industrial accident or occupational disease, and includes the total amount of money disbursed as benefits for the claim and the estimated additional cost, including future costs actually and potentially due, which may result from the settlement of a claim, regardless of when it will be paid.

2. The Commissioner may revise the estimated expenditure for a claim which, in his or her opinion, is inaccurate or inadequate. A revision will be made only after the self-insured employer has been notified in writing and given an opportunity to object to it.

3. A reserve for reopened claims will be calculated by the Division of Insurance based upon a percentage of the actual expenses paid on all closed claims. The percentage will be based upon the following sliding scale according to the number of uninterrupted years the employer has been in the self-insured program:

(a) Inception to 5 years in the program, 3 percent;

(b) Six to 10 years in the program, 2 percent;

(c) Eleven to 15 years in the program, 1 percent; and

(d) More than 15 years in the program, 0.5 percent.

4. The number of years an employer has been self-insured will be based upon the State's fiscal year beginning July 1 and ending June 30. If the date of certification is on or before December 31, a full year will be calculated for the first year of certification. If the date of certification is January 1 or after, the beginning year of certification will not be counted. The number of uninterrupted years an employer has been self-insured will be calculated from the last date on which he or she was certified a self-insured employer.

[Comm'r of Insurance, PC-25 § 22, eff. 8-6-80]—(NAC A 1-24-92)

NAC 616B.471 Purchase of annuity for payment of claim. (NRS 679B.130)

1. Except as otherwise provided in subsection [~~10,~~] ***11,*** a self-insured employer may purchase an annuity payable to an employee who has filed a claim pursuant to chapters 616A to 617, inclusive, of NRS, or to the employee's beneficiary, for the compensation owed to the employee as a result of an industrial injury or occupational disease, except accident benefits, if:

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(a) The annuity is purchased from an insurer authorized to do business in this State;

(b) The employee or the beneficiary is the annuitant and all payments made pursuant to the annuity will be made directly to the employee or the beneficiary; and

(c) The purchase of the annuity by the self-insured employer on behalf of the employee is made to provide compensation owed to the employee or the beneficiary pursuant to chapters 616A to 617, inclusive, of NRS.

2. The purchase of an annuity pursuant to this section does not:

(a) Settle the employee's claim for compensation;

(b) Prohibit the employee from reopening or contesting the claim; or

(c) Transfer the responsibility of the self-insured employer to provide, in a timely manner, accurate payments of compensation owed to the employee to the insurer or any other party.

3. Each contract for an annuity purchased pursuant to this section must set forth the provisions of subsections 1 and 2.

4. An annuity purchased pursuant to this section may not be assigned.

5. A self-insured employer who purchases an annuity pursuant to this section shall make all payments required for the purchase of the annuity.

6. The amount of the total payments made to an employee pursuant to an annuity purchased pursuant to this section may not be less than the amount of compensation, other than accident benefits, owed to the employee pursuant to chapters 616A to 617, inclusive, of NRS.

7. A self-insured employer who purchases an annuity pursuant to this section:

(a) Shall classify the purchase of the annuity as an amount paid for indemnity; and

(b) May reduce his or her reserve balance for indemnity for the claim by the amount of compensation owed to the employee pursuant to chapters 616A to 617, inclusive, of NRS for the period covered by the annuity.

8. A self-insured employer shall submit to the ***Administrator and the*** Commissioner [~~, with the annual report required by NAC 616B.460, a list~~] ***a report*** which sets forth each annuity he or she purchased, if any, in the preceding year. The self-insured employer shall provide the following information for each annuity listed in the report:

(a) The name of the employee on whose behalf the annuity was purchased;

(b) The number assigned to the claim by the self-insured employer;

(c) The number of the contract for the annuity;

(d) The amount paid for the annuity; and

(e) The name of the insurer who issued the annuity.

9. A self-insured employer shall submit the report required pursuant to subsection 8 to:

(a) The Administrator with the report required of insurers pursuant to NAC 616B016; and

(b) The Commissioner with the annual report required of self-insured employers pursuant to NAC 616B.460.

10. An insurer who sells an annuity to a self-insured employer ***pursuant to this section*** shall, within 10 days after the contract for the annuity is executed, submit a copy of that contract to the ***Administrator, the*** Commissioner and the self-insured employer.

10. A self-insured employer may, upon the approval of the Commissioner, purchase an annuity to pay the accident benefits owed to an employee incurred as a result of an industrial injury or occupational disease.

(Added to NAC by Comm'r of Insurance, eff. 11-1-96; A by Div. Industrial Relations by R134-20, 8-22-2023)

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NAC 616B.472 Payment of claim with immediately negotiable instrument. (NRS 679B.130**)** A self-insured employer must issue all payments for claims, including payments made pursuant to an annuity, on instruments that are immediately negotiable in this State pursuant to NRS 687B.255 as a condition for the continuance of his or her certificate of authority to self-insure.

(Added to NAC by Comm'r of Insurance, eff. 1-24-92; A 11-1-96)

NAC 616B.475 Reserve Account to Protect Against Insolvency: Creation; initial assessment. (NRS 616B.309, 679B.130**)**

1. The Commissioner hereby establishes the Reserve Account to Protect Against the Insolvency of Self-Insured Employers.

2. As a condition of certification, each self-insured employer will be initially assessed 0.5 percent of their expected annual expenditures for claims for deposit in the Reserve Account.

[Comm'r of Insurance, PC-25 § 29, eff. 8-6-80]—(NAC A 7-2-84)—(Substituted in revision for NAC 616.196)

NAC 616B.478 Reserve Account to Protect Against Insolvency: Additional assessments; annual assessment; exceptions. (NRS 616B.309, 679B.130**)**

1. If, during the initial year of self-insurance, the employer adds an activity for which employees are covered by self-insurance, the employer must pay an additional assessment which is equivalent to 0.5 percent of the expected annual expenditures for claims applicable to the activity which was added.

2. Each self-insured employer will be assessed an annual assessment equal to .25 percent of the security deposit established for the self-insured employer on June 30th before the assessment. The Commissioner will provide to each self-insured employer a notice specifying the amount of the assessment and the date that it is due, at least 20 days before that date.

3. The annual assessment established in subsection 2 will not be imposed:

(a) In the fiscal year in which a self-insured employer is first certified; or

(b) If the balance of the Reserve Account exceeds:

(1) Three million dollars; or

(2) An amount equivalent to 20 percent of the aggregate of security deposits required of all self-insured employers,

➥ whichever is the greater amount.

(Added to NAC by Comm'r of Insurance, eff. 7-2-84; A by R071-16, 11-2-2016)—(Substituted in revision for NAC 616.1965)

NAC 616B.481 Reserve Account to Protect Against Insolvency: Use; reimbursement by employer. (NRS 616B.309, 679B.130**)**

1. If a self-insured employer fails to pay compensation as a result of being insolvent as provided in NRS 616B.306, the Commissioner may use the Reserve Account, on behalf of that employer to:

(a) Directly pay compensation to the employees of the employer pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS; or

(b) Retain an administrator who shall, under the direction of the Commissioner, assume the responsibility for the administration of claims and payment of compensation pursuant to chapters 616A to 617, inclusive, of NRS.

2. A payment of a claim and the administrative cost from the Reserve Account does not release the self-insured employer or the surety from the employer's responsibility to pay the amounts due under chapters 616A to 617, inclusive, of NRS. The self-insured employer or the surety shall reimburse the Reserve Account for any expense incurred in the payment of claims on its behalf.

(Added to NAC by Comm'r of Insurance, eff. 7-2-84)—(Substituted in revision for NAC 616.197)

NAC 616B.484 Reserve Account to Protect Against Insolvency: Special assessments; notification by mail; failure to pay; exception. (NRS 616B.309, 679B.130)

1. Except as otherwise provided in subsection 3, if the Commissioner determines that the balance in the Reserve Account is insufficient to pay compensation on behalf of an insolvent self-insured employer or if an insolvent self-insured employer fails to reimburse the Account, the Commissioner will assess all employers certified as self-insurers on the date of the assessment, an amount determined by the Commissioner to either pay claims or restore the balance of the Reserve Account. After determining the amount necessary for the assessment, the Commissioner will mail, by regular mail, each self-insured employer a notice specifying the amount of the assessment and the date that it is due, at least 20 days before that date.

2. Each self-insured employer shall remit, on the date specified in the notice, to the Commissioner the total amount of the assessment. Failure by a self-insured employer to pay an assessment is prima facie evidence that the employer has intentionally failed to comply with the regulations of the Commissioner and is grounds for the imposition of a fine or the withdrawal of the certification as a self-insured employer pursuant to NRS 616B.318.

3. If:

(a) The Reserve Account has been used to pay the claims of an insolvent self-insured employer;

(b) That self-insured employer fails to reimburse the Reserve Account; and

(c) The Commissioner determines that the balance of the Reserve Account is sufficient to pay compensation on behalf of other insolvent self-insured employers,

➥ the Commissioner may decide not to impose an assessment pursuant to this section against employers certified as self-insured employers on that date.

(Added to NAC by Comm'r of Insurance, eff. 7-2-84; A by R139-99, 1-27-2000)

NAC 616B.487 Cancellation of certificate by employer. (NRS 616B.312, 679B.130) A self-insured employer may at any time request in writing that his or her certificate to self-insure be cancelled. The Commissioner of Insurance will withdraw the certificate after the self-insurer:

1. Establishes a program to the satisfaction of the Commissioner which will discharge all liabilities and responsibilities incurred by him or her during the period the certificate was in force and which is in addition to the deposit retained by the Commissioner as provided by statute; and

2. Surrenders the certificate.

[Comm'r of Insurance, PC-25 § 31, eff. 8-6-80]—(Substituted in revision for NAC 616.198)

This is an unofficial compilation prepared by the Division of Industrial Relations which incorporates the additions, amendments and repeal of regulations as of the approval of the Permanent Regulation LCB File No. R134-20 on August 22, 2023 and LCB File No. R032-21 on August 22, 2023.

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

NAC 616B.490 Withdrawal of certificate: Grounds; procedure. (NRS 616A.400**,** 616B.318**,** 679B.130**)**

1. The failure of a self-insured employer to comply with the applicable statutes and regulations governing the administration of self-insured workers' compensation is cause for withdrawal of his or her certificate.

2. Proceedings to withdraw a certificate issued pursuant to NAC 616B.400 to 616B.496, inclusive, will be conducted in accordance with chapters 616A to 616D, inclusive, of NRS and regulations adopted pursuant to those chapters.

3. Before the Commissioner issues a formal written notice that he or she intends to withdraw the certificate of a self-insured employer, the Commissioner will request in writing that the employer meet with him or her informally to discuss and resolve the deficiencies that would be grounds for withdrawal. If the self-insured employer declines to meet informally with the Commissioner, fails to respond to the request for a meeting or fails to appear at the scheduled meeting, the Commissioner will proceed to withdraw the certificate in accordance with the provisions of chapters 616A to 616D, inclusive, of NRS.

[Comm'r of Insurance, PC-25 § 30, eff. 8-6-80]—(NAC A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.493 Withdrawal of certificate: Continuing jurisdiction; reports; audits. (NRS 616A.400**,** 616B.318**,** 679B.130**)**

1. After the withdrawal of a certificate, the Commissioner and Administrator retain jurisdiction over injuries sustained during the period of self-insurance until all liabilities and all responsibilities have terminated.

2. The Commissioner and Administrator will require a self-insured employer whose certificate has been withdrawn to provide any necessary reports setting forth the status of all compensable cases which remain open.

3. The Commissioner and Administrator will audit the compensable claims of any self-insured employer whose certificate has been withdrawn, and the employer shall pay the expenses incurred by the Commissioner and Administrator, or a representative of either of them, in conducting the audits.

[Comm'r of Insurance, PC-25 § 32, eff. 8-6-80]—(NAC A by Div. of Industrial Insurance Regulation, 10-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.496 Severability. (NRS 616A.400**,** 679B.130**)** If any provision of NAC 616B.400 to 616B.496, inclusive, or its application to any person, thing or circumstance is held to be invalid, the Commissioner and Administrator intend that the invalidity not affect the other provisions of those sections to the extent that they can be given effect.

[Comm'r of Insurance, PC-25 § 33, eff. 8-6-80]—(NAC A by Div. of Industrial Insurance Regulation, 10-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

ASSOCIATIONS OF SELF-INSURED EMPLOYERS

NAC 616B.510 Definitions. (NRS 616A.400**,** 616B.446**,** 679B.130**)** As used in NAC 616B.510 to 616B.612, inclusive, unless the context otherwise requires, the words and terms

defined in NAC 616B.513 to 616B.522, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A 11-1-96; A by Div. of Industrial Relations by R006-97, 12-9-97; A by Comm'r of Insurance by R090-98, 9-18-98; A by Div. of Industrial Relations by R112-98, 12-18-98; A by Comm'r of Insurance by R112-04, 8-25-2004; R119-07, 12-4-2007)

NAC 616B.513 "Annual claims expenditures" defined. (NRS 616B.353, 616B.446, 679B.130**)** "Annual claims expenditures" means the total amount of money actually disbursed in a 12-month period by or on behalf of an association of self-insured public or private employers as benefits against all past and current claims for industrial insurance.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R095-17, 2-27-2018)

NAC 616B.516 "Association" defined. (NRS 616B.446, 679B.130**)** "Association" means an association of self-insured public or private employers.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.519 "Division of Insurance" defined. (NRS 616B.446, 679B.130**)** "Division of Insurance" means the Division of Insurance of the Department of Business and Industry.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.522 "Expected annual incurred cost of claims" defined. (NRS 616B.353, 616B.446, 679B.130**)** "Expected annual incurred cost of claims" means the average of the annual claims expenditures of all of the members of an association during the immediately preceding 36 months plus any estimated additional costs, including, without limitation, future anticipated costs and the cost of administering the program of self-insurance.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R095-17, 2-27-2018)

NAC 616B.525 Application for certification. (NRS 616B.350, 616B.446, 679B.130**)** In addition to the requirements of NRS 616B.350, an association's application for certification must include:

1. A statement of the amount of the association's money that the initial third-party administrator of the association will control in the 12 months that follow the date of the application.
2. A statement of the amount of the association's money that the association's administrator will control in the 12 months that follow the date of the application.
3. The plan required by NRS 616B.416 for payment of annual assessments by members of the association. The plan may specify that a portion of the assessment, in an amount approved by the Commissioner, will be charged against each member before certification to pay expenses that arise in the certification process. The portion of the assessment that is charged before certification must be credited against the total annual assessment owed by the member.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.528 Underwriting plan and related policies and guidelines: Submission required with application for certification; submission of proposed changes. (NRS 616B.350, 616B.446, 679B.130**)** An association shall submit to the Commissioner, as part of its

application for certification, a complete copy of its underwriting plan and its policies and guidelines for accepting members. Any change made to the underwriting plan must be submitted to the Commissioner before adoption by the association.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.531 Remission of assessment for Account for Insolvent Associations of Self-Insured Employers. (NRS 616B.443**,** 616B.446**,** 679B.130**)** Before the Commissioner will issue a certificate to an association, the association must remit to the Commissioner an assessment for the Account for Insolvent Associations of Self-Insured Public or Private Employers of 1 percent of the amount of the security which it must deposit pursuant to paragraph (d) of subsection 1 of NRS 616B.353. The assessment will be deposited with the State Treasurer to the credit of the Account for Insolvent Associations of Self-Insured Public or Private Employers.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.534 Maintenance and administration of policy of excess insurance. (NRS 616B.353**,** 616B.446**,** 679B.130**)**

1. Each association shall maintain a policy of specific and aggregate excess insurance with a self-insured retention of no less than $100,000.

2. The Commissioner will review the amount of insurance required for an association and may adjust the amount if he or she determines that changed conditions warrant an adjustment.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R102-09, 1-28-2010; R124-20, 4-14-2021)

NAC 616B.537 Required security deposit: Determination of amount; adjustment by Commissioner. (NRS 616B.353**,** 616B.446**,** 679B.130**)**

1. The Commissioner will determine the amount of security an association must deposit pursuant to paragraph (d) of subsection 1 of NRS 616B.353 by calculating an amount that is one-half of the association's expected annual incurred cost of claims and increasing or decreasing that amount, if necessary and within the limitations set forth in subsection 2, based on:

(a) The past and future experience of the association with losses and expenses;

(b) The hazard of catastrophic loss for the association or the type of employers who are members of the association;

(c) The current trends concerning losses within the State;

(d) The nature of the businesses of the members of the association;

(e) The financial ability of the association to pay all compensation due under chapters 616A to 617, inclusive, of NRS;

(f) The probable stability and longevity of the operation of the association; and

(g) Such other contingencies as the Commissioner deems necessary.

2. Except as otherwise provided in subsection 3, the amount of security required must not be less than $100,000 and must not exceed an amount equal to the sum of two times the amount of the self-insured retention maintained by the association pursuant to its policy of aggregate excess insurance and the annual amount paid out for the administration of claims.

3. The Commissioner may adjust the amount of security required if he or she determines that changed conditions warrant such an adjustment, except in no case may the amount be less than $100,000.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.540 Required security deposit: Form; priority of payment in case of loss; administration of certain securities. (NRS 616B.353, 616B.446, 679B.130**)**

1. Except as otherwise provided in paragraph (e) of subsection 1 of NRS 616B.353, an association shall satisfy the requirement to make a security deposit by depositing with the Commissioner:

(a) Cash.

(b) A savings certificate, certificate of deposit or investment certificate. Any such savings certificate, certificate of deposit or investment certificate must be from a financial institution that is insured federally, made payable to the Commissioner and the association.

(c) A surety bond, if it is written by an insurer authorized and licensed to transact the business of surety insurance in this State.

(d) A letter of credit that meets the standards set forth in NAC 616B.543.

(e) Securities guaranteed by the full faith and credit of the United States.

(f) Any combination of paragraphs (a) to (e), inclusive.

➥ Priority of payment in case of loss must be in the order stated in this subsection.

2. Securities guaranteed by the full faith and credit of the United States that are deposited in accordance with this section will be held in trust and administered by the Commissioner, unless:

(a) The association elects to use the services of a custodial financial institution for trust investments; and

(b) The custodial financial institution holds and administers the securities on behalf of the Commissioner under an agreement approved by the Commissioner.

➥ A deposit made pursuant to this subsection may not be withdrawn by the association without the express written consent of the Commissioner.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R102-09, 1-28-2010; R095-17, 2-27-2018)

NAC 616B.543 Required security deposit: Requirements for letter of credit. (NRS 616B.353, 616B.446, 679B.130**)**

1. A letter of credit deposited pursuant to NAC 616B.540 must:

(a) Include a statement that no document other than the demand for payment under the terms of the letter is necessary for payment.

(b) Be irrevocable.

(c) Be valid for at least 1 year and automatically renew for each following year unless written notice is given by the issuer to the Commissioner and the association at least 90 days before the date of renewal.

(d) Be issued by a bank chartered by this State or a bank that is a member of the United States Federal Reserve System and has been approved by the Commissioner.

(e) Include a statement that it is not subject to any conditions or qualifications other than the terms stated in the letter. The letter may be the individual obligation of the financial institution issuing it, but must not be contingent upon the institution's ability to perfect any lien or security interest. The letter must not contain references to any other agreements, documents or persons.

(f) Include a statement that the obligation of the financial institution under the letter is not contingent upon reimbursement.

2. The heading of the letter of credit may include a boxed section containing the name of the association and other appropriate notations. If such a section is present, it must be marked clearly to indicate that the information is for internal identification only, and does not affect the terms of the letter or the financial institution's obligations under the letter.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R139-99, 1-27-2000)

NAC 616B.546 Required security deposit: Records; maintenance and review of lists of claims; costs of administration. (NRS 616B.353, 616B.446, 679B.130**)** An association shall maintain such records as are necessary to document that it maintains an adequate amount for a security deposit pursuant to NRS 616B.353. To determine the accuracy of the recorded and reported amounts for claim reserves, the association shall maintain and the Commissioner will review:

1. A list of open and closed claims, which must include:

(a) The claimant's name;

(b) The number assigned to the claim;

(c) The date of the injury;

(d) The status of the claim, including whether it is open or closed;

(e) The total reserve amount for medical costs and indemnity for each claim;

(f) The total amount paid for medical costs and indemnity for each claim;

(g) The total reserve balance for medical costs and indemnity for each claim;

(h) The total incurred cost of each claim;

(i) The total for all claims of payments for medical costs and indemnity; and

(j) The total of reserve balances for all open claims, including future liabilities for medical costs and indemnity.

2. A list of claims covered or paid by excess insurance.

3. The cost of administration of claims.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.549 Deposit of bond by third-party administrator of association; maximum amount of bond; filing of statement regarding association's money. (NRS 616B.353, 616B.446, 679B.130**)**

1. Except as otherwise provided in subsection 2, a third-party administrator of an association shall deposit with the Commissioner a bond in the amount of $1,000 for each $100,000, or portion thereof, of the association's money which he or she will control in the next calendar year, less the amount of any bond that he or she must file pursuant to NRS 683A.0857. The Commissioner may require a third-party administrator to increase the amount of the bond if there is an increase in the amount of the association's money that he or she controls.

2. The maximum bond required pursuant to this section is $1,000,000.

3. On or before April 1 of each year, a third-party administrator of an association shall file with the Commissioner a statement of the actual amount of the association's money that he or she controlled in the previous calendar year and the amount of the association's money that he or she expects to control in the next calendar year.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R139-99, 1-27-2000)

This is an unofficial compilation prepared by the Division of Industrial Relations which incorporates the additions, amendments and repeal of regulations as of the approval of the Permanent Regulation LCB File No. R134-20 on August 22, 2023 and LCB File No. R032-21 on August 22, 2023.

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

NAC 616B.552 Deposit of bond by association's administrator; minimum and maximum amount of bond; filing of statement regarding association's money. (NRS 616B.353, 616B.446, 679B.130**)**

1. Except as otherwise provided in subsection 2, an association's administrator shall deposit with the Commissioner a bond in the amount of $1,000 for each $100,000, or portion thereof, of the association's money which he or she will control.

2. The minimum bond required pursuant to this section is $100,000. The maximum bond required pursuant to this section is $1,000,000.

3. On or before April 1 of each year, the association's administrator shall file with the Commissioner a statement of the actual amount of the association's money that he or she controlled in the previous calendar year and the amount of the association's money that he or she expects to control in the next calendar year.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R139-99, 1-27-2000)

NAC 616B.555 Financial statement by each member: Submission; inspection; exception. (NRS 616B.404, 616B.446, 679B.130**)**

1. Except as otherwise provided in subsection 3, each approved member of an association shall, within 120 days after the close of the fiscal year of the member, submit to the association's administrator or an independent certified public accountant who has been designated by the board of trustees of the association a financial statement for the member which:

(a) Has been prepared by a certified public accountant in accordance with generally accepted accounting principles of the United States; and

(b) Is stated in United States dollars.

2. The association must make all financial statements received from members pursuant to this section available for inspection by the Commissioner or a designee thereof.

3. The members of an association that has provided a solvency bond to the Commissioner are not required to comply with this section.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.558 Administration of program of self-insurance by association. (NRS 616A.400, 616B.446, 679B.130**)**

1. An association shall at all times maintain adequate resources for the administration of its program of self-insurance. After the program is established, the adequacy of the association's resources and standards of performance for the program will be evaluated by the Commissioner and the Administrator, or a representative of either of them, on the basis of:

(a) The association's promptness in filing reports of accidents and occupational disease;

(b) The association's promptness in making first payments in cases of uncontested claims;

(c) The percentage of contested claims;

(d) The number of injured employees who are reemployed or rehabilitated; and

(e) The delay between the termination of compensation for temporary disabilities and the payment of compensation for permanent partial disabilities.

2. For the purposes of NAC 616B.510 to 616B.612, inclusive, and NRS 616D.120, the acts and omissions of a third-party administrator or an association's administrator, including, without limitation, any violations or failures to comply with chapters 616A to 618, inclusive, of NRS, shall be deemed to be the acts or omissions of the association.

3. An association shall inform the Commissioner and the Administrator, or a representative of either of them, of the name, title and business address of its third-party administrator and association's administrator and the location of any records that the association is required by law to maintain. Before any change is made in the name, title or address of a third-party administrator or an association's administrator or any change is made in the location of records, the intended change must be reported in writing to the Commissioner and the Administrator or a designated agent thereof.

4. An association shall not administer a program of self-insurance from a location outside this State.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.564 Annual report: Filing; signature; failure to file. (NRS 616B.446, 679B.130**)**

1. As a condition to the continuance of its certification, an association must file, on forms supplied by the Commissioner, a report on claims filed with the association in the previous fiscal year.

2. The annual report on claims must be filed on or before September 30 of each year, or within an additional time allowed by the Commissioner.

3. Unless otherwise approved by the Commissioner, the annual report on claims must be signed by the third-party administrator of the association, the association's administrator and by an authorized member of its board of trustees.

4. An association will be assessed an administrative fine of $50 for each day in which it has failed to file the annual report on claims.

5. The Commissioner may require an association to submit quarterly reports on claims in addition to the annual report on claims.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.567 Report and evaluation of estimated expenditures for claims in annual report; calculation of reserve for reopened claims. (NRS 616B.446, 679B.130**)**

1. An association shall calculate the estimated expenditure for each claim reported in the annual report on claims. The estimated expenditure for a claim is the total liability attributable to the industrial accident or occupational disease, including the total amount of money disbursed as benefits for the claim, and the estimated additional cost, including future costs actually and potentially due, which may result from the settlement of a claim, regardless of when it will be paid.

2. The Commissioner may revise an estimated expenditure for a claim which he or she determines is inaccurate or inadequate. A revision will be made only after the association has been notified in writing and given an opportunity to object to the revision.

3. A reserve for reopened claims will be calculated by the Division of Insurance based upon a percentage of the actual expenses paid on all closed claims. The percentage will be based upon the following sliding scale according to the number of uninterrupted years the association has been in a program of self-insurance:

(a) Inception to 5 years in the program, 3 percent;

(b) Six to 10 years in the program, 2 percent;

(c) Eleven to 15 years in the program, 1 percent; and

(d) More than 15 years in the program, 0.5 percent.

4. The number of years an association has been self-insured will be based upon the State's fiscal year beginning July 1 and ending June 30. If the date of certification is on or before December 31, a full year will be calculated for the first year of certification. If the date of certification is January 1 or after, the beginning year of certification will not be counted. The number of uninterrupted years an association has been self-insured will be calculated from the last date on which it was certified.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.572 Purchase of annuity for payment of claim. (NRS 616B.446, 679B.130)

1. Except as otherwise provided in subsection [~~10,~~] ***11,*** an association may purchase an annuity payable to an employee who has filed a claim pursuant to chapters 616A to 617, inclusive, of NRS, or to the employee's beneficiary, for the compensation owed to the employee as a result of an industrial injury or occupational disease, except accident benefits, if:

(a) The annuity is purchased from an insurer authorized to do business in this State;

(b) The employee or the beneficiary is the annuitant and all payments made pursuant to the annuity will be made directly to the employee or the beneficiary; and

(c) The purchase of the annuity by the association on behalf of the employee is made to provide compensation owed to the employee or the beneficiary pursuant to chapters 616A to 617, inclusive, of NRS.

2. The purchase of an annuity pursuant to this section does not:

(a) Settle the employee's claim for compensation;

(b) Prohibit the employee from reopening or contesting the claim; or

(c) Transfer the responsibility of the association to provide, in a timely manner, accurate payments of compensation owed to the employee to the insurer or any other party.

3. Each contract for an annuity purchased pursuant to this section must set forth the provisions of subsections 1 and 2.

4. An annuity purchased pursuant to this section may not be assigned.

5. An association which purchases an annuity pursuant to this section shall make all payments required for the purchase of the annuity.

6. The amount of the total payments made to an employee pursuant to an annuity purchased pursuant to this section may not be less than the amount of compensation, other than accident benefits, owed to the employee pursuant to chapters 616A to 617, inclusive, of NRS.

7. An association which purchases an annuity pursuant to this section:

(a) Shall classify the purchase of the annuity as an amount paid for indemnity; and

(b) May reduce its reserve balance for indemnity for the claim by the amount of compensation owed to the employee pursuant to chapters 616A to 617, inclusive, of NRS for the period covered by the annuity.

8. An association shall submit to the ***Administrator and the*** Commissioner [~~, with the annual report required by NAC 616B.564, a list~~] ***a report*** which sets forth each annuity it purchased, if any, in the preceding year. The [~~self-insured employer~~] ***association*** shall provide the following information for each annuity listed in the report:

(a) The name of the employee on whose behalf the annuity was purchased;

(b) The number assigned to the claim by the association;

(c) The number of the contract for the annuity;

(d) The amount paid for the annuity; and

(e) The name of the insurer who issued the annuity.

9. ***An association shall submit the report required pursuant to subsection 8 to:***

(a) The Administrator with the filing of the report required of associations pursuant to NAC 616B.016; and

(b) The Commissioner with the filing of the annual report which is required of associations pursuant to NAC 616B.564.

10. An insurer who sells an annuity to an association ***pursuant to this section*** shall, within 10 days after the contract for the annuity is executed, submit a copy of that contract to the ***Administrator, the*** Commissioner and the association.

[~~10.~~] ***11.*** An association may, upon the approval of the Commissioner, purchase an annuity to pay the accident benefits of an employee incurred as a result of an industrial injury or occupational disease.

(Added to NAC by Comm'r of Insurance, eff. 11-1-96, A by Div. of Industrial Relations by R134-20, 8-22-2023)

NAC 616B.573 Payment of claim with immediately negotiable instrument. (NRS 616B.446, 679B.130**)**

1. An association shall issue all payments for claims, including payments made pursuant to an annuity, on instruments that are immediately negotiable in this State pursuant to NRS 687B.255.

2. The Commissioner may withdraw the certification of an association that does not comply with subsection 1.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A 11-1-96)

NAC 616B.575 Withdrawal of certificate: Continuing jurisdiction; reports; audits. (NRS 616A.400**)**

1. After the withdrawal of a certificate, the Commissioner and Administrator retain jurisdiction over injuries sustained during the period of self-insurance until all liabilities and all responsibilities have terminated.

2. The Commissioner and Administrator will require an association whose certificate has been withdrawn to provide any necessary reports setting forth the status of all compensable cases which remain open.

3. The Commissioner and Administrator will audit the compensable claims of an association whose certificate has been withdrawn, and the members of the association shall pay the expenses incurred by the Commissioner and Administrator, or a representative of either of them, in conducting the audits.

(Added to NAC by Div. of Industrial Relations by R112-98, eff. 12-18-98)

NAC 616B.576 Account for Insolvent Associations: Annual assessment; notice of assessment; exceptions. (NRS 616B.443, 616B.446, 679B.130**)**

1. Except as otherwise provided in subsection 3, an association shall pay to the Commissioner for deposit in the Account for Insolvent Associations of Self-Insured Public or Private Employers an annual assessment equal to 0.5 percent of the amount of the security that it is required to have on deposit pursuant to NRS 616B.353 on June 30 next preceding the date on which the assessment is due.

2. At least 20 days before the assessment is due, the Commissioner will provide to each association a notice of its obligation to pay the assessment pursuant to subsection 1. The notice will include:

(a) The amount of money the association must pay; and

(b) The date on which the assessment is due.

3. The Commissioner will not collect the annual assessment from an association:

(a) For the fiscal year in which the association is first issued its certification; or

(b) If the balance of the Account for Insolvent Associations of Self-Insured Public or Private Employers exceeds:

(1) Three million dollars; or

(2) An amount equal to 20 percent of the aggregate amount of the security required to be deposited by all certified associations pursuant to NRS 616B.353,

➥ whichever is greater.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R071-16, 11-2-2016)

NAC 616B.579 Account for Insolvent Associations: Additional assessment; notification by mail; failure to pay; exception. (NRS 616B.443, 616B.446, 679B.130**)**

1. Except as otherwise provided in subsection 4, if the Commissioner determines that the balance in the Account for Insolvent Associations of Self-Insured Public or Private Employers is not sufficient to pay compensation that is due pursuant to chapters 616A to 617, inclusive, of NRS on behalf of an insolvent association or if an insolvent association or its surety fails to reimburse the Account pursuant to NAC 616B.582, the Commissioner will collect an additional assessment from all certified associations. The additional assessment will be in an amount calculated to pay all compensation that is due pursuant to chapters 616A to 617, inclusive, of NRS or to reimburse the Account for Insolvent Associations of Self-Insured Public or Private Employers.

2. At least 20 days before the additional assessment is due, the Commissioner will notify each association, by regular mail, of its obligation to pay the additional assessment pursuant to subsection 1. The notice will include:

(a) The amount of money the association must pay; and

(b) The date on which the additional assessment is due.

3. For the purposes of NRS 616B.428, the failure of an association timely to pay the additional assessment pursuant to this section is prima facie evidence that the association intentionally failed to comply with a provision of a regulation adopted by the Commissioner pursuant to chapters 616A to 616D, inclusive, of NRS.

4. If:

(a) The Account for Insolvent Associations of Self-Insured Public or Private Employers has been used to pay the claims of an insolvent association;

(b) That association fails to reimburse the Account for Insolvent Associations of Self-Insured Public or Private Employers; and

(c) The Commissioner determines that the balance of the Account for Insolvent Associations of Self-Insured Public or Private Employers is sufficient to pay compensation that is due pursuant to chapters 616A to 617, inclusive, of NRS on behalf of other insolvent associations,

➥ the Commissioner may decide not to impose an assessment pursuant to this section against associations certified on that date.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R139-99, 1-27-2000)

This is an unofficial compilation prepared by the Division of Industrial Relations which incorporates the additions, amendments and repeal of regulations as of the approval of the Permanent Regulation LCB File No. R134-20 on August 22, 2023 and LCB File No. R032-21 on August 22, 2023.

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

NAC 616B.582 Account for Insolvent Associations: Use; reimbursement by association. (NRS 616B.443**,** 616B.446**,** 679B.130**)**

1. If an association fails to pay any compensation due under chapters 616A to 617, inclusive, of NRS because it is insolvent, the Commissioner may use the money in the Account for Insolvent Associations of Self-Insured Public or Private Employers to:

(a) Pay the compensation that is due; or

(b) Retain experts and administrators to assume, under the direction of the Commissioner, the responsibility for the administration of the claim and the payment of the compensation that is due.

2. The payment of compensation from the Account for Insolvent Associations of Self-Insured Public or Private Employers and of the administrative costs associated with that payment does not limit or terminate the responsibility of the association, the members of the association or any surety providing a surety bond for the association to pay any compensation due pursuant to chapters 616A to 617, inclusive, of NRS. The association or its surety shall reimburse the Account for Insolvent Associations of Self-Insured Public or Private Employers for all expenses incurred in the payment of the compensation.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.588 Submission of reports and financial statements. (NRS 616B.404**,** 616B.446**,** 679B.130**)**

1. During its first 2 years of operation, an association shall submit to the Commissioner a quarterly report concerning the losses of the association. The report must contain a statement of the number of open claims, the amount of reserves established for the medical and indemnity payments on the open claims, the amount paid to date for medical and indemnity payments on the open claims, the number of closed claims and the actual amounts paid for medical and indemnity payments on the closed claims. After an association has completed 2 years of operation, it shall submit the reports on a semiannual basis.

2. During its first 2 years of operation, an association shall submit a quarterly financial statement concerning the association. After an association has completed 2 years of operation, it shall submit the reports on a semiannual basis.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.591 Examinations and audits. (NRS 616B.395**,** 616B.410**,** 616B.446**,** 679B.130**)** The Commissioner may contract with a person to conduct the examinations and audits of associations required by NRS 616B.395 and 616B.410, respectively. The person appointed shall conduct the examinations and audits in accordance with the provisions of the *Financial Examiners Handbook* published by the National Association of Insurance Commissioners and may consult additional resources as needed, but in case of conflict shall follow the provisions of the *Financial Examiners Handbook*.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.594 Calculation of annual assessment paid by each member of association. (NRS 616B.353**,** 616B.407**,** 616B.446**,** 679B.130**)** If an association has received approval from the Commissioner pursuant to subsection 2 of NRS 616B.407 to calculate the annual assessment required to be paid by each member of the association, it may use the rates and

classifications, including experience modification factors, established by the advisory organization.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R139-99, 1-27-2000)

NAC 616B.597 Responsibilities of board of trustees; financial condition of association; financial condition of member. (NRS 616B.365**,** 616B.446**,** 679B.130**)** In the performance of their duties, the members of the board of trustees of an association are fiduciaries to the association and are responsible for communicating all information regarding the association to its members, including, without limitation, the financial condition of the association and the loss experience of the members of the association. The board of trustees shall not withhold material information concerning losses or material information concerning the financial condition of the association from the members of the association and shall promptly disclose such information to any member upon request. If the financial condition of a member fails to comply with the financial requirements established by law, the bylaws of the association or the underwriting plan of the association, the association must immediately disclose such fact to the other members.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.598 Requests for approval of declaration of dividend and for approval of distribution of dividend. (NRS 616B.446**,** 679B.130**)**

1. An association must submit a request for approval of a declaration of a dividend to the Commissioner not less than 30 days before the proposed date of the declaration of the dividend.

2. An association must submit a request for approval of a distribution of a dividend to the Commissioner not less than 30 days before the proposed date of the distribution of the dividend.

3. A request for approval of a distribution of a dividend submitted by an association pursuant to subsection 2 must include:

(a) An actuarial analysis of loss reserves that was prepared by a member of the American Academy of Actuaries not more than 90 days before the date that the request is submitted pursuant to subsection 2;

(b) An analysis of the assets and obligations of the association by fund year that was prepared by the association on a form approved by the Commissioner and includes a detail of the unrealized gains and losses of the association;

(c) The proposed date of the distribution of the dividend;

(d) The amount of the dividend by fund year;

(e) A copy of the most recent financial statements of the association;

(f) Any other information or report that the Commissioner determines to be necessary to evaluate the request; and

(g) If an association has a deficit in any fund year, a plan for making up the deficit of the association that meets the requirements of NRS 616B.422.

4. As used in this section:

(a) "Dividend" means any distribution of earnings or retained earnings, in the form of money or property, from an association to the members of the association.

(b) "Fund year" means the fiscal year used by an association for the purposes of financial reporting.

(Added to NAC by Comm'r of Insurance by R112-04, eff. 8-25-2004)

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NAC 616B.600 Insolvency of association. (NRS 616B.422, 616B.443, 616B.446, 679B.130**)** If an association is deemed to be insolvent pursuant to NRS 616B.422, the Commissioner may:

1. Invoke the provisions of the indemnity agreement executed by each member of the association;
2. Use the security deposit of the association;
3. Use any solvency bonds deposited with him or her by or on behalf of the association; and
4. Use the Account for Insolvent Associations of Self-Insured Public or Private Employers,

➥ to pay claims and related expenses.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R139-99, 1-27-2000)

NAC 616B.603 Determination and consideration of loss ratio. (NRS 616A.400, 616B.386, 616B.446, 679B.130**)** Except as otherwise provided in this section, an employer with a loss ratio of 115 percent or higher under any program or contract of insurance for workers' compensation may not join an association. The Commissioner may allow an employer with a loss ratio higher than 115 percent to join an association if the employer demonstrates to the Commissioner that its loss ratio is the result of an unusual circumstance, such as a single loss, a claim that should have been subrogated or a claim that should have been submitted to a Subsequent Injury Account. The Commissioner will determine the loss ratio of a prospective member of an association by taking the average of the loss ratios of the prospective member for the 3 most recent fiscal years ending not less than 1 year before the date of application by the prospective member.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.609 Requirements of audited statement of financial condition of association. (NRS 616B.404, 616B.446, 679B.130**)** The audited statement of the financial condition of an association required by NRS 616B.404 must be:

1. Prepared in accordance with generally accepted accounting principles of the United States, stated in United States dollars, and must contain the footnotes and opinions of the independent certified public accountant who prepared it.
2. Accompanied by a statement, prepared by the independent certified public accountant who prepared the audited statement, certifying that the combined tangible net worth of all members of the association satisfies the requirements of NRS 616B.353 and that all members meet the financial requirements for membership that are established by law, the bylaws of the association or the underwriting plan of the association.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96; A by R112-04, 8-25-2004; R031-12, 9-14-2012; R095-17, 2-27-2018)

NAC 616B.610 Determination of combined net cash flows of all members. (NRS 616B.353, 616B.386, 616B.446, 679B.130**)** For the purpose of determining combined net cash flows pursuant to paragraph (b) of subsection 2 of NRS 616B.353, subparagraph (2) of paragraph (b) of subsection 5 of NRS 616B.386, or subparagraph (2) of paragraph (b) of subsection 6 of NRS 616B.386, an association of self-insured private employers shall submit to the Commissioner:

1. Copies of the association's last three audited statements of financial condition submitted pursuant to NRS 616B.404; and

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2. Any additional information or documents requested in writing by the Commissioner.

(Added to NAC by Comm'r of Insurance by R119-07, eff. 12-4-2007)

NAC 616B.612 Contents of bylaws of association. (NRS 616B.446**,** 679B.130**)** The bylaws of an association must provide:

1. For review by the board of trustees, at least annually, of the financial condition of each member of the association;

2. For prompt notification to all members if the board of trustees has determined that any member is operating in a hazardous financial condition;

3. For review by the members, at least annually, of the loss experience of each member of the association; and

4. A plan for the cancellation of membership, pursuant to subsection 9 of NRS 616B.386, of members who have an excessive loss experience or who have been deemed by the board of trustees to be operating in a hazardous financial condition.

(Added to NAC by Comm'r of Insurance, eff. 3-22-96)

NAC 616B.XXX NEW REGULATION - Limitations on reimbursement from the Account for expenditures. An association may not receive reimbursement from the Account for expenditures for:

1. Increases in compensation for a permanent total disability which are reimbursable to the association pursuant to NRS 616C.266; or

2. Increases in death benefits which are reimbursable to the association from the Fund for Workers' Compensation and Safety pursuant to NRS 616C.268.

(Added to NAC by Div. of Industrial Relations by R134-20, 8-22-2023)

PRIVATE CARRIERS

NAC 616B.620 Policy of industrial insurance: Approval and modification of forms. (NRS 616B.030**,** 679B.130**)**

1. Except as otherwise provided in subsection 2, an insurer shall file with the Commissioner for approval each form for a policy of industrial insurance that the insurer intends to use and any modification to such a form. If the Commissioner does not disapprove a form or a modification to a form within 60 days after it has been filed, the form or modification to the form shall be deemed approved.

2. An insurer may modify a form for a policy of industrial insurance without filing the modified form with the Commissioner pursuant to subsection 1 if:

(a) The insurer uses a form for a policy of industrial insurance that was filed by the Advisory Organization pursuant to NRS 686B.1765 and approved by the Commissioner;

(b) The modification to the form and any use of the form are consistent with the manual of rules that was filed by the Advisory Organization pursuant to NRS 686B.1765 and approved by the Commissioner; and

(c) The modification is limited to:

(1) The inclusion of the name or logo of the insurer on the form; or

(2) The format of the form, including, without limitation, the size of the type used on the form.

3. As used in this section, "Advisory Organization" has the meaning ascribed to it in NRS 686B.1752.

(Added to NAC by Comm'r of Insurance by R111-98, 3-12-99, eff. 7-1-99)

NAC 616B.622 Policy of industrial insurance: Use of policy. (NRS 616B.030, 679B.130**)** Each private carrier shall use the basic policy of industrial insurance prescribed by the Commissioner pursuant to NRS 616B.030.

(Added to NAC by Comm'r of Insurance by R111-98, 3-12-99, eff. 7-1-99)

NAC 616B.623 Policy of industrial insurance: Determination of unearned or earned premium when policy cancelled before anniversary date or written for less than 12 months. (NRS 616B.030, 679B.130**)**

1. To determine the unearned premium that must be returned to an employer or the earned premium that must be paid to the insurer, as appropriate, when a policy of industrial insurance is cancelled before the anniversary date of the policy or written for a term of less than 12 months:

(a) The limitation of $36,000 established pursuant to NRS 616B.222 on the amount an employee is deemed to have received for services performed during the year in which a policy of industrial insurance is effective shall be deemed to be earned by that employee in increments of $3,000 per month and, if the policy includes a period of less than a month, in daily increments of an amount that represents a proportionate distribution of $3,000 over a month.

(b) Payment that is not received by an employee in even increments throughout the year in which the policy is effective shall be deemed to be paid in accordance with the rating rule for bonuses filed by the advisory organization with the Commissioner pursuant to NRS 686B.177.

2. As used in this section, "advisory organization" has the meaning ascribed to it in NRS 686B.1752.

(Added to NAC by Comm'r of Insurance by R140-99, eff. 1-27-2000)

NAC 616B.624 Approval of organization or association of employers as group. (NRS 616B.036, 679B.130**)**

1. Except as otherwise provided in subsection 2, to obtain approval as an organization or association of employers as a group pursuant to NRS 616B.036, the organization or association must file with the Commissioner or a designated representative thereof:

(a) A copy of the agreement of the organization or association which has been certified by the custodian of the original agreement; and

(b) A written statement from the organization or association that describes the safety committee that the organization or association will establish and maintain to reduce the incidence and severity of accidents by carrying out a program to control losses and provide information on the prevention of accidents.

2. A private carrier may make the filing required pursuant to subsection 1 on behalf of the organization or association if the filing is accompanied by a power of attorney executed by the organization or association authorizing the private carrier to make such a filing on its behalf.

(Added to NAC by Comm'r of Insurance by R111-98, 3-12-99, eff. 7-1-99)

NAC 616B.626 Combining experience for certain purposes. (NRS 679B.130**)** A private carrier may combine the experience of the members of an organization or association of

employers as a group for which the private carrier provides industrial insurance for the purposes of:

1. Paying dividends to the members; or
2. Determining premiums pursuant to a plan for retrospective rating if the plan has been filed with and approved by the Commissioner.

(Added to NAC by Comm'r of Insurance by R111-98, 3-12-99, eff. 7-1-99)

NAC 616B.XXX New Regulation – Purchase of annuity by private carrier. 1. Except as otherwise provided in subsection 11, a private carrier may purchase an annuity payable to an employee who has filed a claim pursuant to chapters 616A to 617, inclusive, of NRS, or to the employee's beneficiary, for the compensation owed to the employee as a result of an industrial injury or occupational disease, except accident benefits, if:

(a) The annuity is purchased from an insurer authorized to do business in this State;

(b) The employee or beneficiary is the annuitant and all payments made pursuant to the annuity will be made directly to the employee or the beneficiary; and

(c) The purchase of the annuity by the private carrier on behalf of the employee is made to provide compensation owed to the employee or the beneficiary pursuant to chapters 616A to 617, inclusive, of NRS.

2. The purchase of an annuity pursuant to this section does not:

(a) Settle the employee's claim for compensation;

(b) Prohibit the employee from reopening or contesting the claim; or

(c) Transfer the responsibility of the private carrier to provide, in a timely manner, accurate payments of compensation owed to the employee to the insurer or any other party.

3. Each contract for an annuity purchased pursuant to this section must set forth the provisions of subsections 1 and 2.

4. An annuity purchased pursuant to this section may not be assigned.

5. A private carrier which purchases an annuity pursuant to this section shall make all payments required for the purchase of the annuity.

6. The amount of the total payments made to an employee pursuant to an annuity purchased pursuant to this section may not be less than the amount of compensation, other than accident benefits, owed to the employee pursuant to chapters 616A to 617, inclusive, of NRS.

7. A private carrier which purchases an annuity pursuant to this section:

(a) Shall classify the purchase of the annuity as an amount paid for indemnity; and

(b) May reduce its reserve balance for indemnity for the claim by the amount of compensation owed to the employee pursuant to chapters 616A to 617, inclusive, of NRS for the period covered by the annuity.

8. A private carrier shall submit to the Administrator and the Commissioner a report which sets forth each annuity it purchased, if any, in the preceding year. The private carrier shall provide the following information for each annuity listed in the report:

(a) The name of the employee on whose behalf the annuity was purchased.

(b) The number assigned to the claim by the private carrier.

(c) The number of the contract for the annuity.

(d) The amount paid for the annuity.

(e) The name of the insurer who issued the annuity.

9. A private carrier shall submit the report required pursuant to subsection 8 to:

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(a) The Administrator with the filing of the report which is required pursuant to NAC 616B.016; and

(b) The Commissioner with the filing of the annual statement which is required pursuant to NRS 680A.270.

10. An insurer who sells an annuity to a private carrier pursuant to this section shall, within 10 days after the contract for the annuity is executed, submit a copy of that contract to the Administrator, the Commissioner and the private carrier.

11. A private carrier may, upon the approval of the Commissioner, purchase an annuity to pay the accident benefits of an employee incurred as a result of an industrial injury or occupational disease.

(Added to NAC by Div. of Industrial Relations by R134-20, 8-22-2023)

ASSESSMENTS

NAC 616B.680 Definitions. (NRS 232.680, 616A.400**)** As used in NAC 616B.680 to 616B.740, inclusive, unless the context otherwise requires, the words and terms defined in NAC 616B.683 to 616B.698, inclusive, have the meanings ascribed to them in those sections.

(Supplied in codification; A by Dep't of Industrial Relations, 7-29-87; 8-30-91; A by Div. of Industrial Relations by R096-99, 11-29-99)

NAC 616B.683 "Annual disbursements" defined. (NRS 232.680, 616A.400**)** "Annual disbursements" means the sum of all payments for compensation made in a fiscal year from:

1. The Uninsured Employers' Claim Account; and
2. The Subsequent Injury Accounts.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.686 "Annual expenditures for claims" defined. (NRS 232.680, 616A.400**)** "Annual expenditures for claims" means:

1. For assessments for fiscal years before fiscal year 1999-2000, the total amount of money actually paid for compensation in a fiscal year, including those costs of claims covered under a policy of reinsurance or a policy of excess insurance, by or on behalf of an insurer pursuant to chapters 616A to 617, inclusive, of NRS, reduced by any amount received from subrogation and reimbursement from the Subsequent Injury Account of the insurer.
2. For assessments for fiscal year 1999-2000 and for each subsequent fiscal year, the total amount of money actually paid for compensation in a fiscal year for injuries occurring on or after July 1, 1999, including those costs of claims covered under a policy of reinsurance or a policy of excess insurance, by an insurer or its third-party administrator pursuant to chapters 616A to 617, inclusive, of NRS, reduced by any amount received from [~~subrogation and reimbursement~~] ***:***

(a) Subrogation;

(b) Reimbursement from the Subsequent Injury Account of the insurer [~~.~~] ***;***

(c) Reimbursement for increases in compensation for a permanent total disability pursuant to NRS 616C.266; and

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(d) Reimbursement from the Fund for Workers' Compensation and Safety for increases in death benefits pursuant to NRS 616C.268.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 7-29-87; A by Div. of Industrial Relations by R112-98, 12-18-98; R096-99, 11-29-99; R134-20, 8-22-2023)

NAC 616B.689 "Expected annual disbursements" defined. (NRS 232.680**,** 616A.400**)** "Expected annual disbursements" means an estimate of the sum of all payments to be made for compensation in a fiscal year from:

1. The Uninsured Employers' Claim Account; and
2. The Subsequent Injury Accounts.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.692 "Expected annual expenditures for claims" defined. (NRS 232.680**,** 616A.400**)** "Expected annual expenditures for claims" means an estimate of the total amount of money to be paid for compensation in a fiscal year for injuries occurring on or after July 1, 1999, including those costs of claims covered under a policy of reinsurance or a policy of excess insurance, by an insurer or its third-party administrator pursuant to chapters 616A to 617, inclusive, of NRS.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R096-99, 11-29-99)

NAC 616B.695 "Insurer" defined. (NRS 232.680**,** 616A.400**)** "Insurer" includes:

1. A self-insured employer;
2. An association of self-insured public employers;
3. An association of self-insured private employers;
4. A private carrier; and
5. An employer who provides accident benefits for injured employees pursuant to NRS 616C.265.

(Added to NAC by Dep't of Industrial Relations, eff. 8-30-91; A by Div. of Industrial Relations by R096-99, 11-29-99; R096-99, 11-29-99, eff. 1-1-2000)

NAC 616B.698 "Program of self-insurance" defined. (NRS 232.680**,** 616A.400**)** "Program of self-insurance" means the program established pursuant to chapters 616A to 617, inclusive, of NRS for which an employer ***or association*** is issued a certificate of qualification as a self-insured employer ***,*** [~~or an~~] association of self-insured ***public*** employers ***or association of self-insured private employers, as applicable,*** by the Commissioner.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98; R134-20, 8-22-2023)

NAC 616B.701 Estimated annual assessment. (NRS 232.680**,** 616A.400**)** The Division will determine the estimated annual assessment to be made against each insurer in order to defray the:

1. Costs and expenses of administering the program of workers' compensation and safety; and

2. Amount of the expected annual disbursements to be made from the Uninsured Employers' Claim Account and the Subsequent Injury Account of the insurer.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.704 Records and reports. (NRS 232.680, 616A.400)

1. Each insurer shall maintain records in this State of annual expenditures for claims, including, without limitation:

(a) Copies of checks issued;

(b) Registers of checks issued relating to claims for workers' compensation, including, without limitation, voided checks;

(c) Registers of any other payment of claims other than by check; and

(d) Working papers used to report annual expenditures for claims.

2. The Division may require an insurer to provide a copy of any cancelled check described in subsection 1. Within 15 days after the insurer receives a written request from the Division, the insurer shall provide a copy of both sides of each cancelled check requested. The Division may require the insurer to provide a certified copy of each cancelled check requested.

3. Each insurer shall provide the Division, at such times and in the form and manner prescribed by the Division, with reports of expected annual expenditures for claims, annual expenditures for claims and such other information as the Division deems necessary to calculate an estimated or final annual assessment. Each report of expenditures for claims must identify expenditures attributable to claims made by persons who were employed by the operators of mines at the time of their injuries.

4. The Division will provide to each insurer an annual report showing the figures and sources used in calculating the estimated annual expenditures for claims.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 7-29-87; 8-30-91; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.707 Consideration of expenditures as expenditures for claims; computation and reporting of value of clinical services. (NRS 232.680, 616A.400)

1. The Division will consider expenditures for the following as expenditures for claims:

(a) A surgeon, assisting surgeon, anesthesiologist or consulting physician.

(b) Charges by a hospital.

(c) Treatment by a physician or chiropractic physician.

(d) X-ray films, computerized axial tomography (CAT) scans, myelograms, magnetic resonance imaging, and other diagnostic tests and procedures.

(e) Physical therapy.

(f) Prescribed drugs and medications, eyeglasses, dental work, prostheses, orthotic devices and corrective shoes by prescription.

(g) Travel to obtain medical care or supplies.

(h) Any other accident benefits.

(i) Compensation for a permanent total, temporary total, permanent partial or temporary partial disability.

(j) Costs of vocational rehabilitation services for an injured employee.

(k) Death benefits.

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(l) Burial expenses.

2. The Division will not consider the following expenditures to be expenditures for claims:

(a) Amounts held in reserve for any anticipated expense in connection with a claim.

(b) Money paid in excess of the compensation calculated pursuant to NRS 616C.440, 616C.475, 616C.490 or 616C.500 or NAC 616C.577 for a temporary total, temporary partial, permanent total or permanent partial disability or vocational rehabilitation maintenance.

(c) Legal expenses, including, without limitation, court costs, attorney's fees, costs for depositions, investigations and hearings.

(d) Payment of an award of interest.

(e) Payment of claims in connection with the Uninsured Employers' Claim Account.

(f) Administrative expenses, including, without limitation, expenses incurred for:

(1) Copying records;

(2) Reviewing any report of a physician or chiropractic physician contained in a file relating to a claim; or

(3) Services relating to the management of costs of medical care.

(g) Costs incurred in a claim that is ultimately denied.

3. The value of clinical services furnished by an insurer for industrial injuries or illnesses must be computed and reported pursuant to the schedule of fees and charges for accident benefits adopted pursuant to subsection 2 of NRS 616C.260.

(Added to NAC by Dep't of Industrial Relations, eff. 7-29-87; A 8-30-91; A by Div. of Industrial Relations, 3-28-94; R112-98, 12-18-98; R118-02, 9-7-2005)

NAC 616B.710 Calculating annual expenditures for claims. (NRS 232.680**,** 616A.400**)** In calculating his or her annual expenditures for claims, an insurer shall:

1. Reduce the expenditures for claims by an amount equal to the amount of money received from [~~subrogation or reimbursement~~] ***:***

(a) Subrogation;

(b) Reimbursement from the insurer's Subsequent Injury Account ***;***

(c) Reimbursement for increases in compensation for permanent total disability pursuant to NRS 616C.266; and

(d) Reimbursement from the Fund for Workers' Compensation and Safety for increases in death benefits pursuant to NRS 616C.268,

➥ in the fiscal year in which [~~it~~] ***the money*** is received; and

2. Not reduce the total amount of money actually paid for compensation to an amount less than zero.

(Added to NAC by Dep't of Industrial Relations, eff. 7-29-87; A by Div. of Industrial Relations by R112-98, 12-18-98; R134-20, 8-22-2023)

NAC 616B.713 Statement of amount of expenditures for claims; amount to be used as source for determining annual expenditures for claims. (NRS 232.680**,** 616A.400**)**

1. Except as otherwise provided in ***subsection 2 and*** NAC 616B.7755, an insurer shall provide to the Division a statement showing the amount of expenditures for claims described in NAC 616B.707 for a period designated by the Division.

2. ***If an insurer assumes the obligation to pay the expenditures for claims of a self-insured employer, association of self-insured public employers or association of self-insured private***

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employers whose certificate of authority has been withdrawn pursuant to this chapter and chapter 616B of NRS, the insurer must provide to the Division a statement showing the amount of expenditures for claims described in NAC 616B.707 which the insurer assumed and paid on behalf of the self-insured employer, association of self-insured public employers or association of self-insured private employers, as applicable, for a period designated by the Division.

3. The statement ***provided pursuant to subsection 1 or 2, as applicable,*** must be verified and signed by a responsible person employed by the insurer or an authorized agent thereof.

[~~3.~~] ***4.*** Amounts reported to the Division pursuant to subsection 1 ***or 2, as applicable,*** will be used as the source for determining annual expenditures for claims.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 7-29-87; A by Div. of Industrial Relations by R112-98, 12-18-98; R096-99, 11-29-99; R134-20, 8-22-2023)

NAC 616B.716 Estimate of annual expenditures for claims. (NRS 232.680**,** 616A.400**)** If the amount of annual expenditures for claims paid by any insurer is not provided to the Division within the required time, the Division will estimate that amount in order to calculate the assessment to be made against the insurer. The estimate will be based upon the insurer's previous history of expenditures for claims or other available data.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83)—(Substituted in revision for NAC 616.5451)

NAC 616B.719 Calculation of expected annual expenditures for claims. (NRS 232.680**,** 616A.400**)**

1. Except as otherwise provided in NAC 616B.7761, the amount of the expected annual expenditures for claims of an insurer is the annualized average of his or her expenditures for claims made during the 3 previous calendar years, unless estimated by the Division pursuant to NAC 616B.716.

2. For the purposes of this section, the annualized average will be calculated by dividing the total expenditures for claims for the 3 previous calendar years by the number of years, or portion thereof, for which claims are reported.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R096-99, 11-29-99)

NAC 616B.722 Calculation of estimated annual assessment. (NRS 232.680**,** 616A.400**)**

1. The amount of the estimated annual assessment made against each insurer to be used to defray:

(a) The administrative costs of the office of the Administrator, office of Legal Counsel, Administrative Services Unit and Workers' Compensation Section will be calculated by multiplying the insurer's percentage of expenditures by the amount approved in the state budget for those administrative costs.

(b) The administrative costs of the offices of the Hearings Division of the Department of Administration and the Nevada Attorney for Injured Workers for the time spent concerning claims for workers' compensation will be calculated by multiplying the insurer's percentage of expenditures by the amount approved in the state budget for these administrative costs.

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(c) The administrative costs of the Occupational Safety and Health Administration and the Safety Consultation and Training Section will be calculated by multiplying the insurer's percentage of expenditures by the amount approved in the state budget for those offices.

(d) The administrative costs of the Mine Safety and Training Section will be calculated by multiplying the insurer's percentage of expenditures by the amount approved in the state budget for the Mine Safety and Training Section.

(e) The costs of the Commissioner for administering the program of self-insurance will be calculated by multiplying the percentage of expenditures of each self-insured employer and the percentage of expenditures of each association of self-insured public ***employers*** or ***association of self-insured*** private employers ***, as applicable,*** by the amount approved in the state budget for those costs.

(f) That portion of the cost of the Office for Consumer Health Assistance that is related to providing assistance to injured employees concerning workers' compensation will be calculated by multiplying the insurer's percentage of expenditures by the amount approved in the state budget for that cost.

(g) The administrative costs of the administration of claims against uninsured employers arising from compliance with NRS 616C.220 will be calculated by multiplying the insurer's percentage of expenditures by the amount derived by multiplying:

(1) The expected annual disbursements to be made from the Uninsured Employers' Claim Account; and

(2) The charge for the administration of claims.

(h) The administrative costs of having premium rates reviewed by the Commissioner will be calculated by multiplying the insurer's percentage of expenditures by the amount approved in the state budget for those administrative costs.

(i) The amount of disbursements from the Uninsured Employers' Claim Account will be calculated by multiplying the insurer's percentage of expenditures by the sum of expected annual disbursements to be made from the Account.

(j) The amount of disbursements from the Subsequent Injury Accounts for Self-Insured Employers and Private Carriers will be calculated by multiplying the insurer's percentage of expenditures by the sum of expected annual disbursements to be made from the Subsequent Injury Accounts for Self-Insured Employers and Private Carriers.

2. For the purposes of this section, "percentage of expenditures" means the proportion of an insurer's expected annual expenditures for claims relative to the amount of the expected annual expenditures for claims of all insurers responsible for the cost shown in a particular category of the state budget.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 8-30-91; A by Div. of Industrial Relations by R112-98, 12-18-98; R096-99, 11-29-99; R108-09, 6-30-2010; R134-20, 8-22-2023)

NAC 616B.725 Pro rata assessment. (NRS 232.680, 616A.400)

1. The estimated annual assessment to be made against an insurer for a portion of a fiscal year may be calculated by the Division.

2. A statement of such an assessment may be issued to the insurer by the Division.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 7-29-87; A by Div. of Industrial Relations by R112-98, 12-18-98; R096-99, 11-29-99)

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NAC 616B.7255 Division may adjust annual assessment. (NRS 232.680, 616A.400**)** The Division may adjust an annual assessment made against an insurer.

(Added to NAC by Div. of Industrial Relations by R096-99, eff. 11-29-99)

NAC 616B.728 Change in ownership of property; cancellation of status as self-insured employer or association. (NRS 232.680, 616A.400**)**

1. If the ownership of property is transferred from one self-insured employer ***,*** [~~or~~] association ***of self-insured public employers or association of self-insured private employers*** to another, or if a self-insured employer ***,*** [~~or~~] association ***of self-insured public employers or association of self-insured private employers*** acquires ownership in a property for which workers' compensation insurance is provided by a private carrier, the Division will transfer data relating to annual expenditures for claims for that property to the new owner within 30 days after receiving notification of the transfer of ownership, and the Division will recompute the estimated annual assessments for the insurers only if it finds the existence of a special circumstance justifying the recomputation.

2. If a self-insured employer elects to give up his or her status as a self-insured employer and to be insured against liability for workers' compensation by a private carrier, the Division will recompute the estimated annual assessment for all insurers only if it finds the existence of a special circumstance justifying the recomputation.

3. If an association ***of self-insured public employers or association of self-insured private employers*** elects to give up its status as an association ***of self-insured public employers or association of self-insured private employers, as applicable,*** and its members elect to be insured against liability for workers' compensation by a private carrier, the Division will recompute the estimated annual assessment for all insurers only if it finds the existence of a special circumstance justifying the recomputation.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98; R112-98, 12-18-98, eff. 7-1-99; R134-20, 8-22-2023)

NAC 616B.731 Statement of assessment; additional assessments; payment. (NRS 232.680, 616A.400**)**

1. The Division will issue to each insurer a statement of his or her estimated annual assessment. The statement must include the date on which the entire amount is due, or, if the insurer elects to pay the assessment in quarterly payments, the amounts and dates on which the payments are due. The Division shall send the statement by mail not less than 30 days before the date on which payment is due.

2. The Division shall not require a quarterly payment more than 30 days before the first day of that quarterly period.

3. Additional assessments to preserve the solvency of:

(a) The Fund for Workers' Compensation and Safety;

(b) The Uninsured Employers' Claim Account; and

(c) The Subsequent Injury Accounts,

➥ may be issued by the Division.

4. An insurer shall pay the assessment in full to the Division pursuant to the date established in subsection 1 or pay the quarterly assessment amounts pursuant to the dates established in subsection 1.

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(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 7-29-87; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.734 Calculation of final assessment; issuance of statement of assessment. (NRS 232.680**,** 616A.400**)**

1. The Division will determine, on the basis of reports issued by the State Controller for the previous fiscal year relating to closing budgets and final trial balances, the amount of money disbursed from and deposited in:

(a) The Fund for Workers' Compensation and Safety;

(b) The Uninsured Employers' Claim Account; and

(c) The Subsequent Injury Accounts for Self-Insured Employers and Private Carriers.

2. Except as otherwise provided in NAC 616B.7767, the Division will calculate, in the same manner as for estimated annual assessments, the final annual assessment for each insurer for the previous fiscal year and will use:

(a) The insurer's statements relating to annual expenditures for claims for the previous fiscal year submitted pursuant to NAC 616B.713; and

(b) The determinations made pursuant to subsection 1.

➥ The Division will issue to the insurer a statement of the final assessment.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A 7-29-87; A by Div. of Industrial Relations by R112-98, 12-18-98; R112-98, 12-18-98, eff. 7-1-99; R096-99, 11-29-99)

NAC 616B.737 Refund; payment of deficit. (NRS 232.680**,** 616A.400**)**

1. The Administrator will return to an insurer any excess amount of the final annual assessment paid by the insurer for the Fund for Workers' Compensation and Safety or a Subsequent Injury Account.

2. If an insurer's final annual assessment for any fund or account is greater than the estimated annual assessment paid by the insurer during the previous fiscal year, the insurer shall pay the deficit to the Division within 30 days after the date of receipt of any statement of deficit. The payment must be deposited in the appropriate Fund or Account.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98)

NAC 616B.740 Penalty for late payment. (NRS 232.680**,** 616A.400**)** Except as otherwise provided in NAC 616B.7758 and 616B.7767, the Division may assess a penalty for the late payment, without good cause, of an assessment for the Fund for Workers' Compensation and Safety, the Subsequent Injury Accounts for Self-Insured Employers or Private Carriers or the Uninsured Employers' Claim Account in accordance with the provisions of NRS 616D.120.

(Added to NAC by Dep't of Industrial Relations, eff. 8-26-83; A by Div. of Industrial Relations by R112-98, 12-18-98; R096-99, 11-29-99)

SUBSEQUENT INJURY ACCOUNT FOR PRIVATE CARRIERS

NAC 616B.760 Submission and contents of claim for reimbursement; refusal to process incomplete or nonconforming claims. (NRS 616A.400**,** 616B.584**,** 616B.587**,** 616B.590**)**

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1. A claim for reimbursement from the Subsequent Injury Account for Private Carriers pursuant to NRS 616B.587 or 616B.590 must be submitted, in writing, to the Administrator.

2. A private carrier who submits a claim pursuant to subsection 1 shall include with the claim:

(a) All documents contained in the file of the claim and any other supporting documents that the private carrier relies upon or deems important for the determination of a claim; and

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

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

4. 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.

5. This section does not prohibit or limit the Administrator from requiring or obtaining from the private carrier or any other person any additional information relating to a claim submitted pursuant to subsection 1.

(Added to NAC by Div. of Industrial Relations by R112-98, 12-18-98, eff. 7-1-99; A by R132-14, 6-28-2016)

NAC 616B.7605 Designation of person to accept service on behalf of private carrier submitting claim. (NRS 616A.400, 616B.584, 616B.587, 616B.590**)** A claim for reimbursement from the Subsequent Injury Account for Private Carriers submitted pursuant to NAC 616B.760 must include, without limitation, the name of the person designated by the private carrier to accept service on behalf of the private carrier submitting the claim and the 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 NAC 616B.761, all notices, pleadings and other documents, including, without limitation, any determinations of the Administrator, must be served on the person designated in the claim pursuant to this section.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.761 Representation of private carrier by legal counsel or lay advocate; service on designated representative. (NRS 616A.400, 616B.584, 616B.587, 616B.590**)**

1. A private carrier who is represented by legal counsel or a lay advocate shall, by service on the Administrator, provide notice of the name and business address of the legal counsel or lay advocate, as applicable, and any facsimile number and electronic mail address at which the legal counsel or lay advocate must be served with any notices, pleadings and other documents.

2. If a private carrier has provided the notice required by subsection 1, 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 private carrier provides written notice to the Administrator of a change in representation.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.7615 Service on legal counsel designated by Administrator. (NRS 616A.400, 616B.584, 616B.587, 616B.590**)** Except for the submission of a claim for reimbursement against the Subsequent Injury Account for Private Carriers pursuant to NAC 616B.760, service on the Administrator of any filing, pleading, notice or other document required

by NAC 616B.760 to 616B.769, inclusive, must be made on the legal counsel designated by the Administrator.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.7625 Methods of service. (NRS 616A.400, 616B.584, 616B.587, 616B.590)

1. Except as otherwise provided by a specific statute or regulation, service of any notice, pleading or other document required by NAC 616B.760 to 616B.769, inclusive, must be hand-delivered or made by first-class 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 pursuant to NAC 616B.7605 and 616B.761, as applicable, to a person of suitable age and discretion who has the authority to accept service at the business address of the person on whom service is to be made or to a person of suitable age and discretion at the place of residence of the person upon whom service is to be made pursuant to NAC 616B.7605 and 616B.761, as applicable.

3. Service by first-class mail shall be deemed complete 3 days after the date on which the document is correctly addressed and mailed to the business address or place of residence of the person upon whom service is to be made pursuant to NAC 616B.7605 and 616B.761, as applicable.

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 NAC 616B.7605 and 616B.761, as applicable; or

(b) The Administrator or legal counsel designated by the Administrator, if service is made pursuant to NAC 616B.7615.

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 NAC 616B.7605 and 616B.761, as applicable; or

(b) The Administrator or legal counsel designated by the Administrator, if service is made pursuant to NAC 616B.7615.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.763 Reimbursement from Account; computation and reporting of value of accident benefits. (NRS 616A.400, 616B.584, 616B.587, 616B.590)

1. The Administrator will make determinations on expenditures for claims for which a private carrier may receive reimbursement from the Subsequent Injury Account for Private Carriers in accordance with the provisions of NAC 616B.707.

2. ***A private carrier may not receive reimbursement from the Subsequent Injury Account for Private Carriers for expenditures for:***

(a) Increases in computation for a permanent total disability which are reimbursable to the private carrier pursuant to NRS 616C.266; or

(b) Increases in death benefits which are reimbursable to the private carrier from the Fund for Workers' Compensation and Safety pursuant to NRS 616C.268.

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3. The value of accident benefits furnished by a private carrier for industrial injuries or illnesses must be computed and reported pursuant to the schedule of fees and charges for accident benefits that was:

(a) Established pursuant to subsection 2 of NRS 616C.260; and

(b) In effect on the date the accident benefits were provided.

(Added to NAC by Div. of Industrial Relations by R112-98, 12-18-98, eff. 7-1-99; A by R118-02, 9-7-2005; R132-14, 6-28-2016; R134-20, 8-22-2023)

NAC 616B.764 Claims for reimbursement for compensation paid by annuity; limitations. (NRS 616A.400**,** 616B.584**,** 616B.587**,** 616B.590**)**

1. A private carrier who purchases an annuity to ensure the payment of a claim that is filed with the private carrier pursuant to chapters 616A to 617, inclusive, of NRS may submit a claim for reimbursement from the Subsequent Injury Account for Private Carriers in accordance with this section, NAC 616B.760, 616B.763, 616B.766 and 616B.767.

2. The private carrier 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 private carrier 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 Administrator will not approve or pay a claim for reimbursement for an annuity submitted pursuant to this section for:

(a) Any amounts which, in combination with previous reimbursements, exceed the lesser of:

(1) The price of the annuity; and

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

(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.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.766 Determination of claim by Administrator; notification; appeal. (NRS 616A.400**,** 616B.584**,** 616B.587**)**

1. The Administrator will examine a claim for reimbursement from the Subsequent Injury Account for Private Carriers and, not later than 120 days after receipt of the claim, notify the private carrier of the disposition of the claim in accordance with NAC 616B.7605 and 616B.761, as applicable.

2. An appeal from a determination of the Administrator concerning a claim for reimbursement from the Subsequent Injury Account for Private Carriers must be made in writing and sent directly to the appeals officer at the Department of Administration within 30 days after the date of the Administrator's determination.

(Added to NAC by Div. of Industrial Relations by R112-98, 12-18-98, eff. 7-1-99; A by R132-14, 6-28-2016)

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NAC 616B.7665 Service of copy of determination and related documents. (NRS 616A.400**,** 616B.584**,** 616B.587**,** 616B.590**)**

1. At the time the Administrator makes a determination regarding a claim for reimbursement from the Subsequent Injury Account for Private Carriers, the Administrator will serve on the person designated pursuant to NAC 616B.7605 or 616B.761 a copy of the determination and a list of the witnesses whom the Administrator may call to testify in support of the determination.

2. If the claim has been denied by the Administrator, in whole or in part, in addition to the documents served pursuant to subsection 1, the Administrator will serve on the person designated pursuant to NAC 616B.7605 or 616B.761 a copy of each document and record upon which the Administrator primarily relied in making the determination.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.767 Reimbursement in form of lump sum from Account; exceptions; considerations. (NRS 616A.400**,** 616B.584**,** 616B.587**,** 616B.590**)**

1. Except as otherwise provided in subsection 2 or by specific statute or regulation, the Administrator will authorize reimbursement from the Subsequent Injury Account for Private Carriers for the payment of benefits in the form of a lump sum if:

(a) The applicant meets the requirements of NRS 616B.587;

(b) The compensation paid was due;

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

(d) A 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 Administrator will not authorize reimbursement from the Subsequent Injury Account for Private Carriers 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 Private Carriers for the payment of benefits in the form of a lump sum pursuant to this section, the Administrator may consider any information that he or she deems relevant, including, without limitation, the application of any statute or regulation.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.768 Permanent physical impairment: Factors for determination; Administrator not bound by certain agreements between injured employee and private carrier. (NRS 616A.400**,** 616B.584**,** 616B.587**,** 616B.590**)**

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

(a) If the preexisting impairment of the 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 Administrator 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 Private Carriers has been submitted to the Administrator pursuant to NAC 616B.760 but the preexisting impairment has not yet been assigned a rating, the Administrator may choose not to make a ruling on the claim until a determination 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 is rated; and

(c) If a claim for reimbursement from the Subsequent Injury Account for Private Carriers has been submitted to the Administrator pursuant to NAC 616B.760 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 ruling 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 preexisting impairment is rated.

2. The Administrator is not bound by any agreement between an injured employee and a private carrier 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.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.7685 Permanent physical impairment: Restrictions on addition or combination of ratings. (NRS 616A.400, 616B.584, 616B.587, 616B.590)

1. For the purposes of subsection 3 of NRS 616B.587, 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 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.587. 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 against the Subsequent Injury Account for Private Carriers must satisfy the definition of "permanent physical impairment" to qualify the body part, organ system or organ function for reimbursement under the claim.

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

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NAC 616B.769 Permanent physical impairment: "Written records" interpreted; satisfaction of requirement of proof of employer's knowledge. (NRS 616A.400, 616B.584, 616B.587, 616B.590)

1. Except as otherwise provided in subsection 2, as used in NRS 616B.587, the Administrator interprets the term "written records" to include:

(a) Any written documentation kept by the 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 Administrator determines that the written documentation constitutes an objective record of the employer's knowledge of the injured employee's preexisting permanent physical impairment:

(1) At the time the employer hired the injured employee.

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

(3) At any time before the 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 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.587 that the private carrier establish by written records that the employer had knowledge of the preexisting permanent physical impairment of the injured employee, the private carrier must establish by a preponderance of the evidence that the contemporaneous written records show that:

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

(b) The employer:

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

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

(Added to NAC by Div. of Industrial Relations by R132-14, eff. 6-28-2016)

NAC 616B.XXX NEW REGULATION – Limitations on reimbursements by a self-insured employer from the Subsequent Injury Account for Self-Insured Employers. A self-insured employer may not receive reimbursement from the Subsequent Injury Account for Self-Insured Employers created by NRS 616B.554 for expenditures for:

1. Increases in compensation for a permanent total disability which are reimbursable to the self-insured employer pursuant to NRS 616C.266; or

2. Increases in death benefits which are reimbursable to the self-insured employer from the Fund for Workers' Compensation and Safety pursuant to NRS 616C.268.

(Added to NAC by Div. of Industrial Relations, by R134-20, 8-22-2023)

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

SUBSEQUENT INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS

NAC 616B.770 "Board" defined. (NRS 616A.400**,** 616B.554**,** 616B.557**)** As used in NAC 616B.770 to 616B.7725, inclusive, unless the context otherwise requires, "Board" has the meaning ascribed to it in NRS 616B.545.

(Added to NAC by Div. of Industrial Relations, eff. 2-18-97; A by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, 2-27-2020)

NAC 616B.7701 "Written records" interpreted; establishment of knowledge of preexisting permanent physical impairment of injured employee. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77013 Guidelines for use by Board in making determinations on ratings of permanent physical impairment. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77015 Guidelines for use by Board in rating permanent physical impairment of multiple body parts. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.7702 Submission of claim. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

1. The Board will approve or disapprove, in whole or in part:

(a) Each claim 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:

(a) Serve the claim, in writing, on the Administrator;

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

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

(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. Such information must include, without limitation, the pertinent medical records of the injured employee who is the subject of the claim.

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

4. A self-insured employer who submits a claim pursuant to subsection 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. 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.

(Added to NAC by Div. of Industrial Relations, eff. 2-18-97; A by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, 2-27-2020)

NAC 616B.7703 Designation of person to accept service on behalf of self-insured employer submitting claim; exception. (NRS 616A.400**,** 616B.554**,** 616B.557**)** 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 NAC 616B.77031, 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77031 Written notice of legal counsel or lay advocate to accept service for self-insured employer; exception. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77032 Service of recommendation concerning claim by Administrator. (NRS 616A.400**,** 616B.554**,** 616B.557**)** 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 NAC 616B.7703 or 616B.77031, 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77033 Service of documents on Board. (NRS 616A.400**,** 616B.554**,** 616B.557**)** Service on the Board of any filing, pleading, notice or other document required by NAC 616B.770 to 616B.7725, inclusive, 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77034 Service of documents on Administrator. (NRS 616A.400**,** 616B.554**,** 616B.557**)** 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.7725, inclusive, must be made on the legal counsel for the Administrator.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77035 Types and completion of service. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

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.7725, inclusive, 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 NAC 616B.7703 or 616B.77031, as applicable;

(b) The legal counsel for the Board or the Administrator if service is made pursuant to NAC 616B.77033; or

(c) The Administrator or legal counsel for the Administrator, if service is made pursuant to NAC 616B.77034.

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 NAC 616B.7703 or 616B.77031, as applicable;

(b) The legal counsel for the Board or the Administrator if service is made pursuant to NAC 616B.77033; or

(c) The Administrator or legal counsel for the Administrator, if service is made pursuant to NAC 616B.77034.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.7704 Recommendation of Administrator concerning approval or disapproval of claim or related expenses; notice; rendering of decision by Board. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

1. Except as otherwise provided in subsection 5 of NAC 616B.7702 or paragraph (b) or (c) of subsection 1 of NAC 616B.77013, not later than 60 days after the date on which a claim is served on the Administrator pursuant to NAC 616B.7702, the Administrator shall:

(a) Submit to the Board a recommendation concerning the approval or disapproval, in whole or in part, of:

(1) The claim; and

(2) Any expenses of the self-insured 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 NAC 616B.7703 or 616B.77031, as applicable, to accept service on behalf of the self-insured employer of that recommendation.

2. The Administrator shall 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, 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.

(Added to NAC by Div. of Industrial Relations, eff. 2-18-97; A by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, 2-27-2020)

NAC 616B.7705 Requirements for Board to authorize reimbursement from Account. (NRS 616A.400, 616B.554, 616B.557)

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.77051 Procedures for reimbursement from Account for certain compensation paid by annuities purchased by self-insured employer to injured employee. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

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.7725, inclusive.

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.7706 Hearing: Request; continuance; conduct and procedures; record; rebuttable presumption; final decision. (NRS 616A.400**,** 616B.554**,** 616B.557**)**

1. If the Board 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 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, 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.

(Added to NAC by Div. of Industrial Relations, eff. 2-18-97; A by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, 2-27-2020)

NAC 616B.7712 Representation by legal counsel at hearing. (NRS 616A.400**,** 616B.554**,** 616B.557**)** The Administrator and the Board may be represented by legal counsel at a hearing conducted pursuant to NAC 616B.7706. A self-insured employer may be represented before the Board by a representative of his or her choice.

This is an unofficial compilation prepared by the Division of Industrial Relations which incorporates the additions, amendments and repeal of regulations as of the approval of the Permanent Regulation LCB File No. R134-20 on August 22, 2023 and LCB File No. R032-21 on August 22, 2023.

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

(Added to NAC by Div. of Industrial Relations, eff. 2-18-97)

NAC 616B.7714 Withdrawal from proceeding by member of Board. (NRS 616A.400, 616B.554, 616B.557**)** A member of the Board may withdraw from a proceeding whenever the member considers himself or herself to be disqualified.

(Added to NAC by Div. of Industrial Relations, eff. 2-18-97)

NAC 616B.772 Petition to adopt, amend or repeal regulation governing administration of Account. (NRS 233B.100, 616B.551**)**

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

NAC 616B.7725 Petition for declaratory order or advisory opinion. (NRS 233B.120**,** 616B.551**)**

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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Self-Insured Employers by R025-18, eff. 2-27-2020)

SUBSEQUENT INJURY ACCOUNT FOR ASSOCIATIONS OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS

General Provisions

NAC 616B.773 Definitions. (NRS 616B.572**,** 616B.575**)** As used in NAC 616B.773 to 616B.7767, inclusive, ***and section 5 of LCB File No. R134-20,*** unless the context otherwise requires, the words and terms defined in NAC 616B.7731 to 616B.775, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99; A by Div. of Industrial Relations by R134-20, 8-22-2023)

NAC 616B.7731 "Account" defined. (NRS 616B.572**,** 616B.575**,** 616B.578**)** "Account" means the Subsequent Injury Account for Associations of Self-Insured Public or Private Employers established pursuant to NRS 616B.575.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97 & R216-97, eff. 8-19-99)—(Substituted in revision for NAC 616B.7748)

NAC 616B.7732 "Annual disbursements from the Account" defined. (NRS 616B.572**,** 616B.575**)** "Annual disbursements from the Account" means the aggregate sum of all payments for compensation made from the Account in a fiscal year.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.7734 "Annual expenditures for claims of an association" defined. (NRS 616B.572**,** 616B.575**)** "Annual expenditures for claims of an association" means the aggregate sum of:

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

1. All money the association paid for compensation in a fiscal year pursuant to chapters 616A to 617, inclusive, of NRS reduced by any money received by the association in that fiscal year from [~~subrogation and reimbursement~~] ***:***

(a) Subrogation;

(b) Reimbursement from the Account; [~~and~~]

(c) Reimbursement for increases in compensation for a permanent total disability pursuant to NRS 616C.266; and

(d) Reimbursement from the Fund for Workers' Compensation and Safety for increases in death benefits pursuant to NRS 616C.268.

2. Any money the successor organization to the State Industrial Insurance System paid for compensation in that fiscal year pursuant to chapters 616A to 617, inclusive, of NRS on behalf of a public or private employer who is a member of the association if the money was paid by the successor organization to the State Industrial Insurance System for claims that were incurred before the public or private employer became a member of the association.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99; A by Div. of Industrial Relations by R134-20, 8-22-2023)

NAC 616B.7736 "Association" defined. (NRS 616B.572, 616B.575, 616B.578**)** "Association" means an association of self-insured public employers or an association of self-insured private employers.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97 & R216-97, eff. 8-19-99)

NAC 616B.7738 "Board" defined. (NRS 616B.572, 616B.575, 616B.578**)** "Board" has the meaning ascribed to it in NRS 616B.563.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97 & R216-97, eff. 8-19-99)

NAC 616B.774 "Estimated annual assessment" defined. (NRS 616B.572, 616B.575**)** "Estimated annual assessment" means an assessment that is calculated pursuant to NAC 616B.7758.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.7742 "Expected annual disbursements from the Account" defined. (NRS 616B.572, 616B.575**)** "Expected annual disbursements from the Account" means an estimate of the annual disbursements from the Account.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.7744 "Expected annual expenditures for claims of an association" defined. (NRS 616B.572, 616B.575**)** "Expected annual expenditures for claims of an association" means an estimate of the annual expenditures for claims of an association.

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

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.7746 "Final annual assessment" defined. (NRS 616B.572**,** 616B.575**)** "Final annual assessment" means an assessment that is calculated pursuant to NAC 616B.7767.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.775 "State Industrial Insurance System" defined. (NRS 616B.572**,** 616B.575**)** "State Industrial Insurance System" has the meaning ascribed to it in NRS 616A.317.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.7752 Administration of Account; general duties for associations. (NRS 616B.572**,** 616B.575**)**

1. The Division shall:

(a) Calculate, impose and collect pursuant to NAC 616B.773 to 616B.7767, inclusive, all assessments, payments and penalties related to administration of the Account; and

(b) Take any other action related to administration of the Account that is authorized by the Board.

2. Each association shall:

(a) Pay all assessments, payments and penalties that are calculated and imposed pursuant to NAC 616B.773 to 616B.7767, inclusive; and

(b) Comply with all other orders of the Board and the Division that are related to administration of the Account.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

Assessments

NAC 616B.7755 Annual expenditures for claims: Records; reports; reductions for amounts received from subrogation or reimbursement. (NRS 616B.572, 616B.575**)**

1. Each association shall maintain records in this State of the annual expenditures for claims of the association. Such records must include, without limitation:

(a) Copies of all checks that have been issued for each claim;

(b) A register that documents all checks that have been issued for each claim and any voided checks related to such claims;

(c) A register that documents any other form of payment that has been made for each claim; and

(d) Any working papers that the association used to report annual expenditures for claims of the association.

2. Except as otherwise provided in this subsection and [~~subsection~~] ***subsections*** 3 [~~,~~] ***and 5,*** each association shall provide to the Division, at such times and in such form and manner as prescribed by the Division:

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(a) A report that contains the annual expenditures for claims and expected annual expenditures for claims of the association;

(b) A report which contains the annual expenditures for claims of the association, divided into monthly expenditures, and which has been verified and signed by an authorized employee or agent of the association; and

(c) Any other information that the Division determines is necessary to calculate an estimated annual assessment or final annual assessment for the association.

3. The Division may, by written request, require an association to provide a copy or certified copy of any check described in subsection 1. If an association receives such a request, the association shall provide the Division with a copy or certified copy, as requested, of both sides of the check not later than 15 days after the date that the association receives the request.

4. To calculate its annual expenditures for claims pursuant to this section, an association shall reduce its annual expenditures for claims made in each fiscal year by the amount of the money the association received in that fiscal year from [~~subrogation and reimbursement~~] ***:***

(a) Subrogation;

(b) Reimbursement from the Account [~~.~~] ***;***

(c) Reimbursement for increases in compensation for a permanent total disability pursuant to NRS 616C.266; and

(d) Reimbursement from the Fund for Workers' Compensation and Safety for increases in death benefits pursuant to NRS 616C.268.

5. If an insurer assumes the obligation to pay the expenditures for claims of an association whose certificate of authority has been withdrawn pursuant to this chapter and chapter 616B of NRS, the insurer must provide to the Division, at such times, for such period and in such form and manner as prescribed by the Division:

(a) A report that contains the expenditures for claims and expected expenditures for claims of the association;

(b) A report which contains the expenditures, divided into monthly expenditures, for claims described in NAC 616B707 which the insurer assumed and paid on behalf of the association, and which has been verified and signed by an authorized employee or agent of the insurer; and

(c) Any other information that the Division determines is necessary to calculate an estimated annual assessment or final annual assessment for the insurer on behalf of the association. (Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99; A by Div. of Industrial Relations by R134-20, 8-22-2023)

NAC 616B.7758 Estimated annual assessment: Collection; calculation; pro rata assessment; statement; penalty. (NRS 616B.572, 616B.575**)**

1. The Division shall collect an estimated annual assessment from each association to defray the expected annual disbursements from the Account.

2. Except as otherwise provided in subsection 3, to calculate the estimated annual assessment to be collected from each association, the Division shall:

(a) Calculate the expected annual expenditures for claims of the association pursuant to NAC 616B.7761 and 616B.7764;

(b) Divide the expected annual expenditures for claims of the association by the aggregate sum of the expected annual expenditures for claims of all associations; and

(c) Multiply the result of the calculation performed pursuant to paragraph (b) by the expected annual disbursements from the Account as calculated by the Division.

3. If an association does not participate in a program of self-insurance for the entire fiscal year, the Division shall collect the estimated annual assessment from the association pursuant to subsection 2 in the proportion that the number of months of the fiscal year during which the association participates in a program of self-insurance bears to the total number of months in the fiscal year.

4. The Division shall mail to each association a statement of its estimated annual assessment that includes the date on which the entire amount of the assessment is due. The Division shall mail the statement to each association:

(a) On or before July 30 of each year; and

(b) Not later than 30 days before the date on which the entire amount of the assessment is due.

5. If an association does not pay the entire amount of the estimated annual assessment to the Division within 7 days after the date on which it is due, the Division shall assess against the association a penalty of $1,000 for each day that any portion of the estimated annual assessment remains unpaid, but such a penalty must not exceed $50,000 for each such unpaid estimated annual assessment.

6. The Administrator may seek recovery of any unpaid assessments or penalties.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

NAC 616B.7761 Expected annual expenditures for claims of association: Calculation; estimation; annual report. (NRS 616B.572**,** 616B.575**)**

1. Except as otherwise provided in subsection 2, to calculate the expected annual expenditures for claims of an association, the Division shall:

(a) Calculate the annual expenditures for claims of the association for each of the immediately preceding 3 calendar years pursuant to NAC 616B.7764; and

(b) Average the annual expenditures for claims of the association for those 3 calendar years.

2. If an association does not provide the Division with its annual expenditures for claims when requested, the Division shall, in lieu of calculating the expected annual expenditures for claims of the association pursuant to subsection 1, estimate the annual expenditures for claims of the association using the previous history of annual expenditures for claims of the association and any other available data, including, without limitation, the annual expenditures for claims of each public or private employer who is a member of the association.

3. The Division shall provide to each association an annual report showing the figures and sources that were used by the Division to:

(a) Calculate the expected annual expenditures for claims of the association pursuant to subsection 1; or

(b) Estimate the annual expenditures for claims of the association pursuant to subsection 2.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

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NAC 616B.7764 Annual expenditures for claims of association: Calculation; statement; consideration of certain expenditures for claims; exceptions. (NRS 616B.572, 616B.575)

1. For the purposes of subsection 1 of NAC 616B.7761, to calculate the annual expenditures for claims of an association for each of the immediately preceding 3 calendar years, the Division shall:

(a) Consider the reports and any other information provided to the Division by the association pursuant to NAC 616B.7755;

(b) Consider the statements obtained from the successor organization to the State Industrial Insurance System pursuant to subsection 2; and

(c) Determine which payments made by the association are to be considered expenditures for claims pursuant to subsections 3 and 4.

2. For each association, the Division shall obtain from the successor organization to the State Industrial Insurance System a statement showing:

(a) The annual expenditures for claims, divided into monthly expenditures, that were made by each public or private employer in the association before such employer became a member of the association; and

(b) The annual expenditures for claims, divided into monthly expenditures, that were made by each public or private employer in the association after such employer became a member of the association.

3. The Division shall consider money paid by an association for any of the following to be expenditures for claims:

(a) Charges by a hospital.

(b) Services of a surgeon, assisting surgeon, anesthesiologist or consulting physician.

(c) Treatment by a physician or chiropractic physician.

(d) X-ray films, computerized axial tomography scans, myelograms, magnetic resonance imaging or other diagnostic tests or procedures.

(e) Physical therapy.

(f) Drugs, medications, eyeglasses, dental work, prosthetic devices, orthotic devices or corrective shoes, if such items are prescribed.

(g) Travel to obtain medical care or supplies.

(h) Any other accident benefits.

(i) Compensation for a permanent total, temporary total, permanent partial or temporary partial disability.

(j) Costs of vocational rehabilitation services for an injured employee.

(k) Death benefits.

(l) Burial expenses.

4. The Division shall not consider any of the following to be expenditures for claims:

(a) Money held in reserve by an association for any anticipated payment related to a claim.

(b) Payments for compensation for a temporary total or temporary partial disability in excess of the average monthly wage.

(c) ***Payments for increases in compensation for a permanent total disability which are reimbursable to the association pursuant to NRS 616C.266.***

(d) Payments for increases in death benefits which are reimbursable to the association from the Fund for Workers' Compensation and Safety pursuant to NRS 616C.268.

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(e) Payments for legal expenses, including, without limitation, attorney's fees and costs for investigations, depositions or hearings.

[~~(d)~~] ***(f)*** Payments for claims that are subsequently determined to be noncompensable.

[~~(e)~~] ***(g)*** Payments for claims related to the Uninsured Employers' Claim Account.

[~~(f)~~] ***(h)*** Payments for administrative expenses, including, without limitation, expenses for:

(1) Copying records;

(2) Reviewing the report of a physician contained in any file related to a claim; or

(3) Services related to the management of costs of medical care.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99; A by Div. of Industrial Relations by R134-20, 8-22-2023)

NAC 616B.7767 Final annual assessment: Calculation; statement; refund; payment of deficit; penalty. (NRS 616B.572, 616B.575)

1. As soon as practicable after the end of a fiscal year, the Division shall calculate a final annual assessment for each association for that completed fiscal year.

2. To calculate the final annual assessment for an association for the completed fiscal year, the Division shall:

(a) Calculate pursuant to NAC 616B.7764 the annual expenditures for claims of the association for the completed fiscal year based upon the appropriate information obtained from the association and the successor organization to the State Industrial Insurance System;

(b) Calculate the amount of money deposited to and paid from the Account based upon the reports issued by the State Controller for the completed fiscal year relating to closing budgets and final trial balances; and

(c) Use the formula set forth in subsection 2 of NAC 616B.7758 to calculate the final annual assessment for the association by substituting the figures for expected annual disbursements from the Account and expected annual expenditures for claims with the appropriate figures for the completed fiscal year for annual disbursements from the Account and annual expenditures for claims.

3. The Division shall mail to each association a statement of its final annual assessment for the completed fiscal year.

4. If the final annual assessment of an association for a completed fiscal year is less than the estimated annual assessment that was paid by the association for that fiscal year, the Administrator shall return to the association the amount of the estimated annual assessment that exceeded the final annual assessment.

5. If the final annual assessment of an association for a completed fiscal year is more than the estimated annual assessment that was paid by the association for that fiscal year, the association shall pay to the Division the amount of the final annual assessment that exceeded the estimated annual assessment. The Division shall include with the statement mailed to the association pursuant to subsection 3 a statement informing the association of the amount that is due and the date on which it is due. If the association does not pay the entire amount to the Division within 7 days after the date on which it is due, the Division shall assess against the association a penalty of $1,000 for each day that any portion of the amount remains unpaid, but such a penalty must not exceed $50,000 for each such unpaid amount.

6. The Administrator may seek recovery of any unpaid assessments or penalties.

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

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R216-97, eff. 8-19-99)

Submission and Review of Claims

NAC 616B.777 Definitions. (NRS 616B.572**,** 616B.578**)** As used in NAC 616B.777 to 616B.7825, inclusive, unless the context otherwise requires, the words and terms defined in NAC 616B.7731, 616B.7736 and 616B.7738 have the meanings ascribed to them in those sections.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99; A by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, 2-27-2020)

NAC 616B.7772 "Written records" interpreted; establishment of knowledge of preexisting permanent physical impairment of injured employee. (NRS 616B.572**,** 616B.578**)**

1. Except as otherwise provided in subsection 2, as used in NRS 616B.578, the Board interprets the term "written records" to include:

(a) Any written documentation kept by the 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 employer's knowledge of the injured employee's preexisting permanent physical impairment:

(1) At the time the employer hired the injured employee.

(2) If a claim for reimbursement from the Account is related to the retention in employment of an employee after an employer acquired knowledge of the employee's preexisting permanent physical impairment and the written documentation existed and was possessed by the 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 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.578 that the association establish by written records that the employer had knowledge of the preexisting permanent physical impairment of the injured employee, the association must establish by a preponderance of the evidence that the contemporaneous written records show that:

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

(b) The 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 employer's knowledge of the preexisting permanent physical impairment.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77723 Guidelines for use by Board in making determinations on ratings of permanent physical impairment. (NRS 616B.572**,** 616B.578**)**

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

(a) If the preexisting impairment of the injured 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 Account has been served on the Administrator pursuant to NAC 616B.7773 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 Account has been served on the Administrator pursuant to NAC 616B.7773 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 an association 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77725 Guidelines for use by Board in rating permanent physical impairment of multiple body parts. (NRS 616B.572**,** 616B.578**)**

1. For the purposes of subsection 3 of NRS 616B.578, 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.578. 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 Account must satisfy the definition of "permanent physical impairment" in NRS 616B.578 to qualify the body part, organ system or organ function for reimbursement under the claim.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.7773 Claims. (NRS 616B.572**,** 616B.578**)**

1. Except as otherwise provided in NAC 616B.779, the Board will approve or disapprove, in whole or in part:

(a) Each claim made for reimbursement from the Account by an association, if the claim is completed by the association pursuant to the requirements set forth in this section; and

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

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

(a) Serve the claim, in writing, on the Administrator;

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

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

(d) Include with the claim all information which is necessary to establish that the claim should be paid from the Account. Such information must include, without limitation, the pertinent medical records of the injured employee who is the subject of the claim.

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

4. An association that submits a claim pursuant to subsection 2 shall, upon the request of the Administrator:

(a) Allow the Administrator to inspect the records maintained by the association concerning the claim; or

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

5. This section does not prohibit or limit the Administrator from requiring or obtaining from the association, the employer or any other person any additional information relating to a claim submitted pursuant to subsection 2.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99; A by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, 2-27-2020)

NAC 616B.77751 Designation of person to accept service on behalf of association submitting claim; exception. (NRS 616B.572**,** 616B.578**)** A claim for reimbursement from the Account submitted pursuant to NAC 616B.7773 must include, without limitation, the name of the

person designated by the association to accept service on behalf of the association 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 NAC 616B.77752, all notices, pleadings and other documents, including, without limitation, any recommendation of the Administrator, must be served on the person designated in the claim pursuant to this section.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77752 Written notice of legal counsel or lay advocate to accept service for association; exception. (NRS 616B.572**,** 616B.578**)**

1. An association that is represented by legal counsel or a lay advocate shall, by service on the Board and the Administrator, provide 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 an association 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 association provides written notice to the Board and the Administrator of a change in representation.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77753 Service of recommendation concerning claim by Administrator. (NRS 616B.572**,** 616B.578**)** At the time the Administrator determines that a claim for reimbursement from the Account is complete and makes a recommendation regarding the claim, the Administrator shall serve on the person designated pursuant to NAC 616B.77751 or 616B.77752, 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77754 Service of documents on Board. (NRS 616B.572**,** 616B.578**)** Service on the Board of any filing, pleading, notice or other document required by NAC 616B.777 to 616B.7825, inclusive, 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77755 Service of documents on Administrator. (NRS 616B.572**,** 616B.578**)** Except for the submission of a claim for reimbursement from the Account pursuant to NAC 616B.7773, service on the Administrator of any filing, pleading, notice or other document required

by NAC 616B.777 to 616B.7825, inclusive, must be made on the legal counsel for the Administrator.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.77756 Types and completion of service. (NRS 616B.572, 616B.578)

1. Except as otherwise provided by a specific statute or regulation, service of any notice, pleading or other document required by NAC 616B.777 to 616B.7825, inclusive, 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 NAC 616B.77751 or 616B.77752, as applicable;

(b) The legal counsel for the Board or the Administrator if service is made pursuant to NAC 616B.77754; or

(c) The Administrator or legal counsel for the Administrator if service is made pursuant to NAC 616B.77755.

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 NAC 616B.77751 or 616B.77752, as applicable;

(b) The legal counsel for the Board or the Administrator if service is made pursuant to NAC 616B.77754; or

(c) The Administrator or legal counsel for the Administrator, if service is made pursuant to NAC 616B.77755.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.7777 Recommendation of Administrator concerning approval or disapproval of claim or related expenses; notice; rendering of decision by Board. (NRS 616B.572, 616B.578)

1. Except as otherwise provided in subsection 5 of NAC 616B.7773 or paragraph (b) or (c) of subsection 1 of NAC 616B.77723, not later than 60 days after the date on which a claim is served on the Administrator pursuant to NAC 616B.7773, the Administrator shall:

(a) Submit to the Board a recommendation concerning the approval or disapproval, in whole or in part, of:

(1) The claim; and

(2) Any expenses of the association related to the claim that the Administrator has verified pursuant to the provisions of NAC 616B.707; and

(b) Notify the association that submitted the claim or the person designated pursuant to NAC 616B.77751 or 616B.77752, as applicable, to accept service on behalf of the association of that recommendation.

2. The Administrator shall 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 association'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, the Board will approve a claim and the expenses of an association, in whole or in part, only if the association proves by a preponderance of the evidence that all of the requirements of NRS 616B.578 or 616B.581, as applicable, have been satisfied.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99; A by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, 2-27-2020)

NAC 616B.7778 Requirements for Board to authorize reimbursement from Account. (NRS 616B.572, 616B.578)

1. Except as otherwise provided in subsection 2 or by specific statute or regulation, the Board may authorize reimbursement from the Account for the payment of benefits in the form of a lump sum if:

(a) The association meets the requirements of NRS 616B.578;

(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 Account; 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 Account 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 Account 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

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

NAC 616B.77785 Procedures for reimbursement from Account for certain compensation paid by annuities purchased by association to injured employee. (NRS 616B.572, 616B.578**)**

1. An association that purchases an annuity to satisfy the payment of a claim that is filed with the association pursuant to chapters 616A to 617, inclusive, of NRS may submit a claim for reimbursement from the Account in accordance with NAC 616B.777 to 616B.7825, inclusive.

2. The association 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 association 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.7779 Hearing: Request; continuance; conduct and procedures; record; rebuttable presumption; final decision. (NRS 616B.572, 616B.578**)**

1. If the Board initially disapproves, in whole or in part, a claim or any of the expenses related to the claim, the association that 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 legal counsel notifies the association 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, pursuant to subsection 6, upon the request of the Administrator or the association that 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 association 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 association, the association shall pay all costs related to the services of the court reporter and all costs that are necessary to provide the Board with a copy of the transcript of the hearing.

6. A request for a continuance by the Administrator or an association 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 association has given the Administrator all the information which the association believes is necessary to support the claim and that the association 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 association 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 association.

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

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99; A by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, 2-27-2020)

NAC 616B.7788 Representation by legal counsel. (NRS 616B.572**,** 616B.578**)** At any meeting or hearing conducted by the Board:

1. The Administrator and the Board may be represented by legal counsel; and

2. An association that is authorized to appear before the Board may be represented by a representative of its choice, but the association remains the real party in interest during all proceedings.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99)

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

NAC 616B.7789 Withdrawal from proceeding by member of Board. (NRS 616B.572, 616B.578**)** A member of the Board may withdraw from participating in a proceeding before the Board whenever the member considers himself or herself to be disqualified.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99)

NAC 616B.779 Claims barred when association fails to pay assessment or penalty. (NRS 616B.572, 616B.575, 616B.578**)** If an association fails to pay any portion of an assessment or penalty which is related to administration of the Account and which has been assessed against the association pursuant to the provisions of this chapter, the association may not submit a claim to the Board, have a claim considered by the Board or receive payment for any claim that has been approved by the Board until the association pays the unpaid assessment or penalty in full.

(Added to NAC by Bd. for Admin. of Subsequent Injury Fund for Ass'ns of Self-Insured Pub. or Private Employers by R215-97, eff. 8-19-99)

NAC 616B.782 Petition to adopt, amend or repeal regulation governing administration of Account. (NRS 233B.100, 616B.572**)**

1. A petition may be filed with the Board requesting that the Board adopt, amend or repeal a regulation governing the administration of the Account. 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

NAC 616B.7825 Petition for declaratory order or advisory opinion. (NRS 233B.120**,** 616B.572**)**

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, provide a copy to 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.

(Added to NAC by Bd. for Admin. of Subsequent Injury Acct. for Ass'ns of Self-Insured Pub. or Private Employers by R026-18, eff. 2-27-2020)

CONSOLIDATED INSURANCE PROGRAMS

NAC 616B.911 Contents of contract to provide insurance for program. (NRS 616B.720, 616B.737**)** Each contract for the provision of industrial insurance coverage for a consolidated insurance program that must be filed with the Commissioner pursuant to NRS 616B.712 must, in addition to the elements required by NRS 616B.720, include or be accompanied by:

1. A statement of the estimated total cost of the construction project that itemizes how much of that cost is attributable to:

(a) Constructing the project;

(b) Designing the project;

(c) Acquiring the real property on which the project will be constructed;

(d) Connecting the project to utilities;

(e) Excavating and carrying out underground improvements for the project; and

(f) Acquiring equipment and furnishings for the project.

2. Evidence satisfactory to prove that the two persons hired or contracted pursuant to NRS 616B.725 to serve as the primary and alternate coordinators for safety:

(a) Possess credentials in the field of safety; and

(b) Have at least 3 years of the type of experience in overseeing matters of occupational safety and health in the field of construction,

➥ that the Administrator has determined are adequate to prepare a person to act as a coordinator for safety for a construction project.

3. A statement issued and signed by the:

(a) Owner of the construction project, if the contract covers an owner-controlled insurance program; or

(b) Principal contractor of the construction project, if the contract covers a contractor-controlled insurance program,

➥ which declares that the primary and alternate coordinators for safety for the construction project will not serve as coordinators for safety for another construction project that is covered by a different consolidated insurance program.

4. A statement issued and signed by the:

(a) Owner of the construction project, if the contract covers an owner-controlled insurance program; or

(b) Principal contractor of the construction project, if the contract covers a contractor-controlled insurance program,

➥ which declares that the person hired or contracted pursuant to NRS 616B.727 to serve as the administrator of claims for industrial insurance for the construction project will not serve as an administrator of claims for industrial insurance for another construction project that is covered by a different consolidated insurance program.

5. A copy of a plan or other materials developed by the:

(a) Owner of the construction project, if the contract covers an owner-controlled insurance program; or

(b) Principal contractor of the construction project, if the contract covers a contractor-controlled insurance program,

➥ that he or she will use to provide the information required to be provided by subsection 2 of NRS 616B.735 to potential contractors and subcontractors at the pre-bid conference. The plan or materials must contain all the information specified in paragraphs (a) to (d), inclusive, of subsection 2 of NRS 616B.735.

6. A list of all other lines of insurance that will be included in the consolidated insurance program for the construction project.

(Added to NAC by Comm'r of Insurance by R138-99, eff. 1-27-2000)

NAC 616B.915 Submission of new information to Commissioner upon change of information in contract. (NRS 616B.737) If a change occurs to any of the information specified in NAC 616B.911, the private company, public entity or utility that filed the contract with the Commissioner shall submit the new information to the Commissioner within 14 calendar days after the change occurs.

(Added to NAC by Comm'r of Insurance by R138-99, eff. 1-27-2000)

NAC 616B.917 Determination of loss experience. (NRS 616B.732, 616B.737) If an owner or principal contractor establishes and administers a consolidated insurance program pursuant to NRS 616B.710, each employee of a contractor or subcontractor who is covered under the consolidated insurance program:

1. If the consolidated insurance program is established before July 1, 2007, shall be deemed to be an employee of the owner or principal contractor for the purpose of determining the loss experience of the owner or principal contractor.

2. If the consolidated insurance program is established on or after July 1, 2007:

(a) Is an employee of the contractor or subcontractor for the purpose of determining the loss experience of the contractor or subcontractor.

(b) Shall not be deemed to be an employee of the owner or principal contractor for the purpose of determining the loss experience of the owner or principal contractor.

(Added to NAC by Comm'r of Insurance by R204-08, eff. 12-17-2008)

MODIFIED PROGRAM FOR OFFENDERS IN LOCAL WORK PROGRAMS

NAC 616B.922 Scope. (NRS 616B.029) The provisions of NAC 616B.922 to 616B.948, inclusive, apply only to an offender who is injured or killed in the course and scope of his or her employment in a work program directed by the administrator of a county jail, city jail or other local detention facility and only if the administrator of the jail or other detention facility has provided and secured coverage from an insurer under the modified program of industrial insurance pursuant to NRS 616B.029. The program does not include:

1. Coverage for an injury that occurred before the offender was confined at a county jail, city jail or other local detention facility.

2. Any service or benefit for vocational rehabilitation.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.924 Applicability of statutes and other regulations. (NRS 616B.029) Except as otherwise provided in NAC 616B.922, the provisions of chapters 616A to 617, inclusive, of NRS and chapters 616A to 617, inclusive, of NAC apply to any offender confined at a county jail, city jail or other local detention facility and engaged in employment in a work program to the extent that those provisions do not conflict with NAC 616B.922 to 616B.948, inclusive.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.926 "Wages" defined. (NRS 616B.029) In the case of an offender confined at a county jail, city jail or other local detention facility who is injured or killed in the course and scope of his or her employment in the work program, the term "wages":

1. Includes only the money he or she earns in the work program before any deductions are made from those earnings.

2. Does not include:

(a) The value of room and board, medical care or other goods or services provided by the county jail, city jail or other local detention facility;

(b) The value of good time earned towards reducing the sentence of the offender; or

(c) Income from any source other than the work program.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

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NAC 616B.928 Statement of rights and duties of offenders. (NRS 616B.029) The administrator of the county jail, city jail or other local detention facility or a designated agent thereof shall:

1. Adopt a written statement of the rights and duties of an offender pursuant to the provisions of NAC 616B.922 to 616B.948, inclusive. The statement must include the procedures and time limits that the offender must follow when filing for benefits.
2. Give a copy of the statement to each offender confined at a county jail, city jail or other local detention facility before the offender's first assignment to work.
3. Post a copy of the statement in a conspicuous place of an area, to which the offender has access, in the county jail, city jail or other local detention facility where the offender is incarcerated.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.930 Injuries for which compensation not allowed. (NRS 616B.029) No compensation may be authorized pursuant to NAC 616B.922 to 616B.948, inclusive, for an injury that:

1. Results from an assault, whether or not the offender is the aggressor.
2. Occurs as a result of a deliberate violation of a rule of the work program by the offender.
3. Is proximately caused by the offender's intoxication. If the employee was intoxicated at the time of the injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.
4. Is proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his or her system at the time of the injury for which the employee did not have a current and lawful prescription issued in his or her name, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.932 Submission of notice of injury. (NRS 616B.029)

1. Except as otherwise provided in subsections 2 and 3, an offender or someone acting on his or her behalf shall submit the notice of injury pursuant to the provisions of NRS 616C.015.
2. The notice of injury must be submitted to the administrator of the county jail, city jail or other local detention facility or a designated agent thereof.
3. The administrator of the jail or other detention facility or a designated agent shall file the notice with its insurer within 15 days after he or she receives it. If an offender submits the notice of injury to the administrator of the jail or other detention facility or a designated agent within the time provided by NRS 616C.015, the failure of the administrator of the jail or other detention facility or a designated agent to file the notice with its insurer within 15 days does not bar a claim for compensation.
4. Incarceration is not an excuse for failure to submit a timely notice of injury.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

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NAC 616B.934 Periods for accrual and payment of compensation. (NRS 616B.029)

1. An offender is not entitled to accrue or be paid any compensation for temporary total disability, temporary partial disability, permanent partial disability or permanent total disability while incarcerated.

2. Payment of compensation begins upon the release of the offender from incarceration on:

(a) Parole;

(b) Final discharge; or

(c) Discharge from custody by order of a court of competent jurisdiction.

3. Compensation must be discontinued during any subsequent period of incarceration in:

(a) A facility of the Department of Corrections;

(b) Any other federal or state prison system; or

(c) A county jail, city jail or other local detention facility.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.936 Payment of lump-sum benefits. (NRS 616B.029) An offender must not be paid a lump-sum settlement for an injury or disease while incarcerated. When the offender is released, any lump-sum benefit to which he or she is entitled:

1. Of more than $2,400, must be paid in monthly installments that do not exceed 10 percent of the total benefit in any month. The first installment must be paid within 30 days after the insurer receives written notice, from the offender or the administrator of the county jail, city jail or other local detention facility where the offender was incarcerated, that the offender has been released.

2. Of $2,400 or less, must be paid in a single payment within 30 days after the insurer receives written notice, from the offender or the administrator of the county jail, city jail or other local detention facility where the offender was incarcerated, that the offender has been released.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.938 Medical treatment of offenders. (NRS 616B.029)

1. Except as otherwise provided in this section, the administrator of the county jail, city jail or other local detention facility or a designated agent thereof has control over the medical treatment of any offender, including the right to select a treating, consulting and rating physician or chiropractic physician, or both, and any other health care professionals. An offender is not entitled to select a health care professional.

2. The county jail, city jail or other local detention facility is not required to disclose in advance to the offender the date, time or location of any medical service.

3. The insurer may schedule any appropriate medical test, consultation or treatment in addition to those scheduled by the county jail, city jail or other local detention facility, but shall do so in accordance with the security procedures of the jail or other detention facility.

4. If an insurer schedules an evaluation to determine if an offender has suffered a permanent partial disability, it must use a rating physician or chiropractic physician who has been designated by the Administrator to determine the disability pursuant to NRS 616C.490 but is not required to select the next physician or chiropractic physician according to the order in which their names appear on the list maintained by the Administrator.

5. If medication is prescribed for an offender, it must be retained and dispensed by the county jail, city jail or other local detention facility.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

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NAC 616B.940 Hearings. (NRS 616B.029)

1. An offender is not entitled to be physically present at a hearing before a hearing officer or an appeals officer.
2. Any hearing must be conducted by telephone unless the appeals officer or hearing officer determines, for good cause, that the hearing should be held at a county jail, city jail or other local detention facility. In such a case, the hearing must be arranged and conducted in accordance with the security procedures of the county jail, city jail or other local detention facility.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.942 Services of Nevada Attorney for Injured Workers. (NRS 616B.029) Offenders are entitled to the services of the Nevada Attorney for Injured Workers, subject to the rules and procedures adopted by the county jail, city jail or other local detention facility relating to contact with offenders.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.944 Low wage is not ground to reopen claim. (NRS 616B.029) The fact that an offender has earned a relatively low wage while incarcerated is not a ground for the reopening of a claim.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.946 No right to reject coverage. (NRS 616B.029) An offender incarcerated in a county jail, city jail or other local detention facility may not reject coverage if the administrator of the county jail, city jail or other local detention facility has provided and secured coverage from an insurer under the modified program of industrial insurance pursuant to NRS 616B.029.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

NAC 616B.948 Civil rights not restored. (NRS 616B.029) NAC 616B.922 to 616B.948, inclusive, do not restore, in whole or in part, any of the civil rights of an offender.

(Added to NAC by Div. of Industrial Relations by R209-97, eff. 4-17-98)

MODIFIED PROGRAM FOR OFFENDERS IN PRISON INDUSTRY PROGRAMS

NAC 616B.960 Scope. (NRS 616B.028) The provisions of NAC 616B.960 to 616B.986, inclusive, apply only to an offender who is injured or killed in the course and scope of his or her employment in the prison industry program, and only if the Director of the Department of Corrections obtained coverage from an insurer under the modified program of industrial insurance. The program does not include:

1. Coverage for an injury that occurred before the offender was confined in an institution or facility operated by the Department of Corrections.
2. Any service or benefit for vocational rehabilitation.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.962 Applicability of statutes and other regulations. (NRS 616B.028) Except as otherwise provided in NAC 616B.960, the provisions of chapters 616A to 617, inclusive, of NRS and chapters 616A to 617, inclusive, of NAC apply to an offender confined in

an institution or facility operated by the Department of Corrections and engaged in work in a prison industry program to the extent that those provisions do not conflict with the provisions of NAC 616B.960 to 616B.986, inclusive.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.964 "Wages" defined. (NRS 616B.028) For the purposes of an offender confined in an institution or facility operated by the Department of Corrections who is injured or killed in the course and scope of his or her employment in the prison industry program, "wages":

1. Means the money he or she earns in the prison industry program before any deductions are made from those earnings.
2. Does not include:

(a) The value of room and board, medical care and other goods and services provided by the Department of Corrections.

(b) The value of good time earned towards reducing the prison sentence of the offender.

(c) Income from any source other than the prison industry program.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.966 Written procedure of rights and duties of offenders. (NRS 616B.028) The Department of Corrections shall:

1. Adopt a written procedure that establishes the rights and duties of an offender pursuant to the provisions of NAC 616B.960 to 616B.986, inclusive. The procedure must include the manner for filing a claim for compensation, including the period within which a claim must be filed.
2. Provide a copy of the procedure to each offender confined in an institution or facility operated by the Department of Corrections before his or her first assignment to work.
3. Display a copy of the procedure in a conspicuous place to which the offender has access in an institution or facility where the offender is incarcerated.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.968 Injuries for which compensation not allowed. (NRS 616B.028) An offender is not entitled to receive compensation pursuant to the provisions of NAC 616B.960 to 616B.986, inclusive, for an injury that:

1. Results from an assault, regardless of whether the offender is the aggressor.
2. Occurs as a result of an intentional violation of a work rule of the work program by the offender.
3. Is proximately caused by the offender's intoxication. If the employee was intoxicated at the time of the injury, intoxication must be presumed to be a proximate cause of the injury unless rebutted by evidence to the contrary.
4. Is proximately caused by the offender's use of a controlled substance. If the employee has any amount of a controlled substance in his or her system at the time of the injury for which the employee did not have a current and lawful prescription issued in his or her name, the controlled substance must be presumed to be a proximate cause of the injury unless rebutted by evidence to the contrary.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

This is an unofficial compilation prepared by the Division of Industrial Relations which incorporates the additions, amendments and repeal of regulations as of the approval of the Permanent Regulation LCB File No. R134-20 on August 22, 2023 and LCB File No. R032-21 on August 22, 2023.

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

NAC 616B.970 Submission of notice of injury. (NRS 616B.028)

1. Except as otherwise provided in subsections 2 and 3, an offender or any person acting on his or her behalf shall submit the notice of injury in the manner provided in NRS 616C.015.

2. The notice of injury must be submitted to the Deputy Director of Industrial Programs of the Department of Corrections.

3. The Deputy Director of Industrial Programs shall file the notice with the insurer providing coverage under the modified program of industrial insurance within 15 days after receiving the notice. If the offender or a person acting on his or her behalf submits the notice of injury to the Deputy Director within the time prescribed by NRS 616C.015, the failure of the Deputy Director to file the notice with the insurer within 15 days does not bar a claim for compensation.

4. Incarceration of the offender is not an excuse for failure to submit a notice of injury within the period prescribed by NRS 616C.015.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.972 Periods for accrual and payment of compensation. (NRS 616B.028)

1. An offender is not entitled to accrue or receive any compensation for temporary total disability, temporary partial disability, permanent partial disability or permanent total disability while incarcerated.

2. The insurer shall schedule an evaluation of the offender before his or her release to determine whether the industrial injury of the offender will affect his or her ability to work.

3. The payment of compensation begins upon the release of the offender from incarceration on:

(a) Parole;

(b) Final discharge; or

(c) Discharge from custody by order of a court of competent jurisdiction.

4. The payment of compensation must be discontinued during any subsequent period of incarceration in:

(a) An institution or facility operated by the Department of Corrections;

(b) Any federal or state prison system; or

(c) A county jail, city jail or other local detention facility.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.974 Payment of lump-sum benefits. (NRS 616B.028)

1. An offender is not entitled to receive a lump-sum settlement for an injury or disease while incarcerated.

2. The insurer shall schedule an evaluation of the offender before his or her release to determine whether the industrial injury of the offender will affect his or her ability to work.

3. When the offender is released, any lump-sum benefit to which he or she is entitled that:

(a) Is more than $2,400, must be paid in monthly installments that do not exceed 10 percent of the total benefit in any month. The first installment must be paid within 30 days after the insurer receives written notice from the offender, the warden of the institution or the manager of the facility where the offender was incarcerated or a person designated by the warden or manager that the offender has been released.

(b) Is $2,400 or less, must be paid in a single payment within 30 days after the insurer receives written notice from the offender, the warden of the institution or manager of the facility where the

offender was incarcerated or a person designated by the warden or manager that the offender has been released.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.976 Medical treatment of offenders. (NRS 616B.028**)**

1. Except as otherwise provided in this section, the Department of Corrections has control over the medical treatment of an offender, including the right to select a treating, consulting and rating physician or chiropractic physician, or both, and any other practitioner. An offender is not entitled to select a practitioner. As used in this subsection, "practitioner" has the meaning ascribed to it in NRS 439A.0195.

2. The Department of Corrections is not required to disclose in advance to the offender the date, time or location of any medical service.

3. The insurer may schedule any appropriate medical test, consultation or treatment in addition to those scheduled by the Department of Corrections, but shall do so in accordance with the security procedures of the Department of Corrections.

4. If the insurer schedules an evaluation to determine whether an offender has suffered a permanent partial disability, it must use a rating physician or chiropractic physician designated by the Administrator to determine the disability pursuant to NRS 616C.490, but it is not required to select the next physician or chiropractic physician according to the order in which their names appear on the list maintained by the Administrator.

5. If medication is prescribed for an offender, it must be retained and dispensed by the Department of Corrections.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.978 Hearings. (NRS 616B.028**)**

1. An offender is not entitled to be present at a hearing before a hearing officer or an appeals officer.

2. A hearing must be conducted by telephone unless the appeals officer or hearing officer determines, for good cause, that the hearing should be held at an institution operated by the Department of Corrections. In such a case, the hearing must be arranged and conducted in accordance with the security procedures of the Department of Corrections.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.980 Services of Nevada Attorney for Injured Workers. (NRS 616B.028**)** An offender is entitled to the services of the Nevada Attorney for Injured Workers, subject to the rules and procedures adopted by the Department of Corrections relating to contact with offenders.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.982 Low wage is not ground to reopen claim. (NRS 616B.028**)** The fact that an offender has earned a relatively low wage during incarceration is not a ground for the reopening of a claim.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.984 No right to reject coverage. (NRS 616B.028**)** An offender who is confined in an institution or facility operated by the Department of Corrections may not reject

coverage if the Director of the Department of Corrections has obtained coverage under the modified program of industrial insurance.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

NAC 616B.986 Civil rights not restored. (NRS 616B.028**)** The provisions of NAC 616B.960 to 616B.986, inclusive, do not restore, in whole or in part, any of the civil rights of an offender.

(Added to NAC by Div. of Industrial Relations by R072-99, eff. 10-28-99)

APPEALS PANEL FOR INDUSTRIAL INSURANCE

General Provisions

NAC 616B.990 Definitions. (NRS 616B.790**)** As used in NAC 616B.990 to 616B.994, inclusive, unless the context otherwise requires, the words and terms defined in NAC 616B.9902 to 616B.991, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9902 "Chair" defined. (NRS 616B.790**)** "Chair" means the Chair of the Appeals Panel elected pursuant to NRS 616B.762.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9904 "Division of Insurance" defined. (NRS 616B.790**)** "Division of Insurance" means the Division of Insurance of the Department of Business and Industry.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9906 "Intervener" defined. (NRS 616B.790**)** "Intervener" means a person who has been granted leave to intervene in a hearing pursuant to NAC 616B.9918.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9908 "Petitioner" defined. (NRS 616B.790**)** "Petitioner" means any policyholder or employer, other than a self-insured employer, who files a grievance pursuant to NRS 616B.772.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.991 "Respondent" defined. (NRS 616B.790**)** "Respondent" means any person who is asked to respond to an appeal, including, without limitation, a private carrier or the advisory organization.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9912 Scope and construction; deviation. (NRS 616B.790**)**

1. Except as otherwise provided in this section, the provisions of NAC 616B.990 to 616B.994, inclusive:

(a) Govern all practices and procedures for a hearing held pursuant to NRS 616B.760 to 616B.790, inclusive; and

(b) Must be liberally construed to secure the just and speedy determination of all issues presented to the Appeals Panel.

2. Except as otherwise provided by specific statute, for good cause shown, the Appeals Panel may authorize deviation from the provisions of NAC 616B.990 to 616B.994, inclusive, if all parties to the appeal agree to the deviation.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9914 Meetings. (NRS 616B.790) All meetings of the Appeals Panel must be conducted in compliance with the provisions of chapter 241 of NRS.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

Hearings

NAC 616B.9916 Request for hearing: Submission; contents; withdrawal. (NRS 616B.772, 616B.790)

1. To file a grievance with the Appeals Panel pursuant to NRS 616B.772, the petitioner must submit a written request for a hearing by United States mail or by electronic means in the manner set forth in NRS 719.250 to the Division of Insurance at one of the following addresses:

Division of Insurance
Department of Business and Industry
1818 East College Parkway, Suite 103
Carson City, Nevada 89706
Electronic mail address: insinfo@doi.state.nv.us
Facsimile copy: (775) 687-0787
Telephone: (775) 687-0700

2. The request for a hearing must include, without limitation:

(a) A statement which requests a hearing;

(b) A clear, simple statement which describes the issues in dispute and the relief requested; and

(c) A description of any statutes, rules, agency decisions or other authorities that the petitioner believes may be relevant to the issues in dispute or the relief requested.

3. The petitioner may withdraw the request for a hearing at any time before the date set for the hearing by sending written notice of the withdrawal in the same manner as set forth in subsection 1 for submitting a request for a hearing.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9918 Participation in hearing as intervener. (NRS 616B.790)

1. A person, other than an original party to a hearing, who believes that he or she may be directly and immediately affected by the hearing and who wishes to participate in the hearing as an intervener, must secure an order from the Chair granting the person leave to intervene.

2. To seek an order for leave to intervene, the person must file with the Division of Insurance, not later than 2 days before commencement of the hearing, a petition for leave to intervene and proof of service of copies of the petition on each party to the hearing. If the petition and proof of service are filed later than 2 days before commencement of the hearing, the petition must state a

substantial reason for the delay. If such a substantial reason for the delay is not stated in the petition, the Appeals Panel shall not consider the petition.

3. A petition for leave to intervene:

(a) Must be in writing;

(b) Must clearly identify the hearing in which the person seeks leave to intervene;

(c) Must set forth the name and address of the person seeking leave to intervene;

(d) Must contain a clear and concise statement which sets forth:

(1) The direct and immediate interest of the person in the hearing; and

(2) The manner in which the person may be affected if he or she is not granted leave to intervene;

(e) Must outline the information the person relied upon as the basis for seeking leave to intervene; and

(f) If affirmative relief is sought, must contain a clear and concise statement regarding the relief sought, the basis for seeking such relief, and the nature and quantity of evidence the person may present at the hearing if granted leave to intervene.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.992 Conflict of interest of member who represents Division of Insurance. (NRS 616B.782**,** 616B.790**)** A member of the Appeals Panel who represents the Division of Insurance shall be deemed not to have a conflict of interest pursuant to NRS 616B.782 with respect to the Division of Insurance if the Division of Insurance is a party to the hearing or has been involved in the handling of the appeal.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9922 Setting and notice of hearing. (NRS 616B.777**,** 616B.790**)**

1. Not later than 30 days after the receipt of a request for a hearing, the Chair shall set a date for the hearing. The hearing must be conducted not later than 90 days after the receipt of the request for a hearing, at such time and place as the Chair prescribes.

2. The Appeals Panel shall provide to the parties written notice of the hearing pursuant to NRS 616B.777. The notice must specify:

(a) The purpose of the hearing;

(b) The date, time and location of the hearing; and

(c) Any other information required pursuant to the provisions of NRS 233B.121.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9924 Prehearing conference. (NRS 616B.790**)**

1. Upon the motion of the Chair or a party, the Chair may hold a prehearing conference:

(a) To formulate or simplify the issues;

(b) To obtain documents that will avoid unnecessary delays;

(c) To arrange for the exchange of proposed exhibits or prepared expert testimony; or

(d) To expedite any other matters for the orderly conduct and disposition of the hearing or any settlements thereof.

2. The agreements, admissions or stipulations made by the parties in a prehearing conference:

(a) Must be made a part of the record; and

(b) Unless otherwise stipulated to by all of the parties and consented to by the Chair, are binding upon the parties during the course of subsequent hearings.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9926 Appearance and representation of parties. (NRS 616B.790)

1. A party to a hearing may appear at the hearing:

(a) In person;

(b) By an attorney or other authorized representative; or

(c) As provided in subsection 2.

2. If a party is not a natural person, the party may appear at the hearing:

(a) If a partnership, by a partner.

(b) If a corporation, by an officer, authorized representative or regular employee.

(c) If a municipal corporation, by an authorized officer, agent or employee.

(d) If an unincorporated association, by an authorized officer, representative or employee.

3. If a party is represented by an attorney, the attorney must be admitted to practice before the highest court of any state of the United States and be in good standing.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9928 Closure of hearings to public. (NRS 616B.780, 616B.790)

1. If a petitioner believes the Appeals Panel will be considering proprietary information, the petitioner may request that the hearing be closed to the public pursuant to NRS 616B.780.

2. If the Appeals Panel determines that it will be considering proprietary information, the hearing must be closed to the public.

3. The decision of the Appeals Panel in a hearing that is closed to the public must be made part of the public record.

4. As used in this section, "proprietary information" has the meaning ascribed to it in NRS 616B.780.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.993 Conduct of hearings. (NRS 616B.790)

1. The Appeals Panel shall conduct hearings as informally as possible under the circumstances.

2. The Appeals Panel shall direct their efforts toward promoting consistency and fairness in all decisions while ensuring compliance with all rules pertaining to classifications, rating and experience modifications.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9932 Filing of briefs and statements of facts. (NRS 616B.790)

1. During any hearing, the Chair may formally order any party to the hearing to file a brief or a statement of facts with the Chair by a date set by the Chair.

2. The party shall file with the Chair the brief or statement of facts and proof of service of copies of the brief or statement of facts on all other parties to the hearing.

3. The Chair may extend the time for filing the brief or statement of facts if a party requests such an extension before the date set for filing. The Chair shall issue a decision to grant or deny the extension in writing.

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

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9934 Burden of proof; order of presentation; continuances and recesses; failure of petitioner to appear. (NRS 616B.790)

1. The petitioner has the burden of proof in a hearing.
2. During each hearing, unless otherwise ordered by the Chair in a specific case, the Chair and parties will ordinarily present the following information in the following order:
(a) A brief orientation by the Chair.
(b) Testimony and other evidence that addresses the issues in dispute and the relief requested by the petitioner.
(c) Testimony and other evidence by any interveners.
(d) Testimony and other evidence by the respondent.
(e) Rebuttal testimony and other evidence by the petitioner.
3. The Appeals Panel may grant continuances or recesses before or during a hearing.
4. If a petitioner fails to appear before the Appeals Panel at the time and place set for the hearing, the Appeals Panel may:
(a) Dismiss the hearing with or without prejudice; or
(b) Recess the hearing for a period set by the Appeals Panel to enable the petitioner to attend.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9936 Rules of evidence. (NRS 616B.790)

1. Hearings will not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.
2. "Hearsay evidence," as that term is used in civil actions, may be admitted to supplement or explain other evidence.
3. "Incompetent evidence," as that term is used in civil actions, is not admissible, with the exception of hearsay evidence as provided in subsection 2.
4. Irrelevant, cumulative and unduly repetitious evidence is not admissible.
5. The rules of privilege must be applied as they are applied in civil actions.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

NAC 616B.9938 Transcripts and recordings of hearings. (NRS 616B.790)

1. If a party wishes to obtain a transcript of a hearing, that party must:
(a) Furnish a reporter;
(b) Pay for the transcript; and
(c) Deliver a copy of the transcript to the Division of Insurance not later than 20 days after the completion of the hearing.
2. If more than one party wishes to obtain a copy of the transcript of the hearing, the costs of obtaining the transcript must be divided equally among those parties.
3. An audiotape or other recording of the hearing must be made and retained for at least 1 year and is considered a public record.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)

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NAC 616B.994 Rendering of decisions; appeals. (NRS 616B.785, 616B.787, 616B.790)

1. The decision of the Appeals Panel:

(a) Must be in writing;

(b) Must include a statement of facts, an analysis and an opinion;

(c) Must include a statement regarding the right of the parties to appeal;

(d) Must be issued by the Chair not later than 30 days after the completion of the hearing unless the Appeals Panel orders an extension of time to reconvene to consider additional information; and

(e) Must be delivered, in person or by first-class mail, to the petitioner and each respondent and intervener in the hearing.

2. Decisions of the Appeals Panel may be appealed pursuant to the provisions of NRS 616B.787 and 679B.310.

3. A party wishing to appeal the decision of the Appeals Panel must direct the appeal to the Commissioner. The Commissioner will conduct the hearing for such an appeal pursuant to the provisions of NRS 679B.310 to 679B.370, inclusive.

(Added to NAC by Comm'r of Insurance by R006-03, eff. 12-16-2003)