STATE OF NEVADA – DEPT OF BUSINESS & INDUSTRY – DIVISION OF INDUSTRIAL RELATIONS

Workers' Compensation Section

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FREQUENTLY ASKED QUESTIONS (FAQs)
COLAs for Permanent Total Disability (PTD) and Survivors' Benefits Claims

Why should insurers submit claims that qualify for the annual COLA to DIR for verification?

Insurers may request reimbursement from the DIR for the additional cost associated with the COLA increase for certain claims. Before DIR will authorize reimbursement, it must be established that the COLA has been calculated correctly. Since the COLA is a percentage increase (2.3%) above the monthly benefit rate, DIR must confirm that the insurer calculated the monthly benefit rate (66 2/3% of the Average Monthly Wage) correctly to begin with. **The verification process is to ensure that the monthly benefit rate before applying the COLA is accurate.** The sooner the claim is verified by DIR, the more likely it is that the injured worker or their dependents will receive the correct monthly amount and the insurer will ultimately be able to be appropriately reimbursed the additional cost associated with the COLA by DIR.

How should insurers pay the increase required by the COLA if the monthly benefit is currently paid by an annuity?

PTD and Survivors' benefits claims that are paid by annuities are subject to the annual increase required by NRS 616C.473 (PTD) and NRS 616C.508 (Survivors). Insurers are responsible for ensuring the additional amount associated with the increase is paid timely to the injured worker or survivors. This may be accomplished by an additional payment each month directly from the insurer or the insurer may purchase a separate annuity to cover the cost associated with the COLA.

Are COLAs that are paid by separate annuities eligible for reimbursement?

Yes, if the COLA is eligible pursuant to NRS 616C.508(3) or NRS 232.680(4)(g) (as amended by SB 377), then it is reimbursable, regardless of the method of payment. The insurer, however, must provide proof to DIR that the COLA payments were made to the claimant by the annuity company just as they would if they were to make the payments themselves directly to the claimant when requesting reimbursement.

Do PTD or Survivors' benefits claims with stipulated settlements (legal agreements specifying dollar amounts and/or the timing of payments to be made) qualify for the COLA?

Yes, all PTD and Survivors' benefits claims qualify for the COLA pursuant to NRS 616C.473 and NRS 616C.508.

If PTD or Survivors' benefits are ordered to be paid bi-weekly instead of monthly, how should the COLA formula be applied?

The COLA should be calculated and applied to each bi-weekly payment to ensure the 2.3% annual increase is attained.

Is there an additional, separate payment due to survivors related to the "catch-up" calculation?

No. The "catch-up" calculation is not a payment. There is no pre-January 1 2020 **payment** associated with the "catch-up." It is strictly a calculation that must be made **prior to** applying the 2.3% increase (COLA) to the January 2020 monthly payment.

Example: Using the Example 4 from the training presentation, a Survivors' Benefit claim with a date of injury before 1/1/1989 and subject to the 2.3% catch up compounded 3 times would look like this:

Monthly Rate: $1000

Monthly Rate after catch-up calculation: $1070.60
Monthly Rate after catch-up calculation and applying 2.3% COLA in Jan 2020: $1095.22

December 2019 Monthly Payment: $1000
January 2020 Monthly Payment: $1095.22

Reimbursable Amount: $1095.22 - $1070.60 = $24.62/month (Cost attributable to the COLA only)

Are the 'catch-up" calculations required for both PTD and Survivors' benefits claims?

No, the "catch-up" calculations only apply to certain Survivors' benefits claims pursuant to Secs 5 and 6 of AB 370.

Should the COLA be calculated based on the PTD or Survivors' benefit monthly rate he or she is actually paid each month after offsets are applied?

No. The COLA should be calculated based on the claimant's monthly rate:

- Prior to applying offsets (PPD or subrogation), **and**
- After applying any other legislatively mandated increases.

Am I allowed to increase the 10% PPD offset on those claims on which we are currently recovering PPD lump sum settlements (PPD offsets)?

We are not aware of any statutory or regulatory prohibition precluding an insurer from increasing the ten percent (10%) PPD offset up to 10% of the new increased monthly rate when the COLA is calculated and paid.

How does COLA effect my assessment?

Expenses related to COLA payments should be included as part of reported claims expenditures and are included in the calculation of the assessment for each insurer. Beginning in 2021, there will be a separate assessment to all insurers for COLAs authorized under AB370 and SB377 of the 2019 Legislative Session. Also beginning in 2021, insurers will be eligible for reimbursement of certain COLA payments made pursuant to AB370 and SB377