



# NEVADA WORKERS' COMPENSATION CHRONICLE



Department of Business & Industry (B&I)  
A Publication of the Workers' Compensation Section (WCS)

Division of Industrial Relations (DIR)  
Spring Edition (March - May) 2008

This newsletter is not intended to provide legal advice to the reader. Legal opinions or interpretations of statutes and regulations referenced here should be sought from competent legal professionals.

## WCS Five-Year Audit Cycle Explained

"It can't be five years already." These words often greet Workers' Compensation Section auditors when arriving to conduct periodic audits required by law (NRS 616B.003). However, what many workers' compensation insurers do not realize is that the five-year window is a maximum time between audits—therefore, many insurers will receive visits from WCS auditors two, three or four years from the previous audit. In addition, the statute requires that each year WCS randomly conduct partial audits of those insurers with a history of violations.

Many insurers may ask, "What are my odds of being audited? How random is random?" In a nutshell, each year WCS determines how many workers' compensation insurers are approved by the Nevada Division of Insurance. As of January 1, 2008, there were 483; this total in-



cludes private carriers, self-insureds, and associations. WCS then divides that number by 5 to yield the total number of audits to be completed each year. Then WCS reviews the list and determines which companies have never been audited, and these insurers are given a high priority. Also, WCS looks at the last audit completion dates; insurers with the oldest dates are also given a high priority.

As for random, partial audits, these are usually follow-up audits done after a regular audit or complaint has uncovered specific problems. The auditor will make a recommendation to the appropriate regional manager of employee/insurer/TPA oversight. Once approved, the follow-up audit will only focus on the problem areas and is usually done within a year after the original audit was completed. For any questions about audits, please call WCS Northern District 775 684-7270 or Southern District 702 486-9080.



## HOT TOPIC



### UR Must Be Fair, Effective

Utilization Review has been around for a while, but lately, it has become a hot topic. Injured workers, their attorneys, medical providers and employers have besieged our medical unit with complaints recently. Most utilization review organizations are located outside of Nevada. This is legal, as long as they are certified by the Nevada Division of Insurance and their physicians have a special purpose license issued by the Nevada State Board of Medical Examiners. After these two requirements are met, then the UROs can review medical procedures, and issue and render determinations and/or recommendations to their clients. So far, so good.

However, in several recent cases, the UROs are denying what appear to be obvious procedures that are needed to meet the minimum medical care standards [NRS 616C.250 & NAC 616C.123]. The injured workers need these procedures according to the local doctors; the employers want the best for their injured workers and attorneys are frustrated because they must appeal these determinations to have them overturned. The UROs must justify their decisions and give appeal rights.

The latest gross error was a URO decision that denied a surgical procedure and gave the injured worker appeal rights to the California Appeals Board. Insurers and third-party administrators have an obligation and the right to have an independent party review requested medical procedures. This process helps keep medical costs down and is one way to make sure that (Continued on page 4)

## Efficient Claims Processing Is Everyone's Responsibility

The continued success of Nevada's workers' compensation system depends on all of the partners' carrying out their responsibilities in the timely manner required by law. Here are some reminders from the regulator's point of view:

**Employers** must know the name of their workers' compensation insurer and how to contact their claims administration office. They must also make this information readily available to their employees. In fact, failing to post the required information poster (Form D-1) at their workplace may result in administrative fines. Health care providers may contact employers for insurer information to process a claim. Failure to provide this information quickly results in unnecessary delays which ultimately increase overall costs and drive up premiums.

**Employees** need to tell their supervisor after they are hurt on the job and complete a Form C-1, "Notice of Injury or Occupational Disease," provided by their employer, even if they don't seek medical treatment. If they do seek treatment, they must complete their portion of the Form C-4, "Employees Claim for Compensation," as accurately as possible which includes knowing their employer's business name, address and phone number along with the name of the workers' compensation insurer or third-party administrator. (This information is found on the Form D-1 poster that must be prominently displayed in the workplace.) Finally, they should keep copies of the Forms C-1, C-4 and C-3 "Employer's Report of (Continued on page 3)

### INSIDE THIS NEWSLETTER

- ① Five-Year Audit Cycle Demystified
- ① Claims Processing Responsibilities
- ① Hot Topic: UR Must Be Fair
- ② Confusion Corner: Light Duty Pay
- ② Fraud Watch: Employee Leasing Pitfalls
- ③ 2008 Med Fee Schedule
- ③ Timely POC Reporting Required
- ③ Spring Training: Mar 1 - May 31
- ④ 2008 Mileage Reimbursement Rate
- ④ New WCS Staff Members
- ④ WCS Contact Information
- ④ State Holiday Office Closures



## CONFUSION CORNER

### LIGHT DUTY AND SALARIES

Of late, there seems to be confusion about how much salary an injured worker is entitled to. According to **NRS 616C.475(8)**:

If the certification of disability specifies that the physical limitations or restrictions are temporary, the employer of the employee at the time of his accident may offer temporary, light-duty employment to the employee. If the employer makes such an offer, the employer shall confirm the offer in writing within 10 days after making the offer. The making, acceptance or rejection of an offer of temporary, light-duty employment pursuant to this subsection does not affect the eligibility of the employee to receive vocational rehabilitation services, including compensation, and does not exempt the employer from complying with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations adopted by the Division governing vocational rehabilitation services. Any offer of temporary, light-duty employment made by the employer must specify a position that:

(a) Is substantially similar to the employee's position at the time of his injury in relation to the location of the employment and the hours he is required to work;

(b) Provides a gross wage that is:

(1) If the position is in the same classification of employment, equal to the gross wage the employee was earning at the time of his injury; or

(2) If the position is not in the same classification of employment, substantially similar to the gross wage the employee was earning at the time of his injury; and

(c) Has the same employment benefits as the position of the employee at the time of his injury.

**NAC 616C.583** provides more requirements concerning light duty offers:

1. An offer of employment at light duty to an injured employee by his employer must be in writing; be mailed to both the insurer and the injured employee; and include the net wage to be paid the injured employee; the hours which the injured employee will be



## FRAUD WATCH

### EMPLOYEE LEASING: A TRAP FOR THE UNWARY



An emerging trend is the concept of employee leasing. ABC Construction leases employees from WYZ Employment Agency. Which of the companies is, or are both companies, responsible for providing workers' compensation?

Nevada law is very clear on this issue. **NRS 616B.691** provides that an employee leasing company that complies with all the statutory and regulatory requirements "shall be deemed to be the employer of the employees it leases to a client company." As "the" employer of the leased employees, the responsibility for providing workers' compensation would shift from the client company, ABC Construction, to the leasing company, WYZ Employment Agency.

All too frequently, however, WYZ Employment Agency is not registered as an employee leasing company with the Workers' Compensation Section as required by law (**NRS 616B.673**). What are the consequences for ABC Construction when the leasing company fails to provide workers' compensation?

Since the leasing company has failed to comply with the requirements to register, WYZ Employment Agency is not considered to be the employer for the leased employees. Under traditional legal principles, the client company actually using the employees would be considered the employer. A criminal complaint would be filed against ABC Construction for failing to provide the required workers' compensation and ABC Construction would be liable for the costs incurred by any injured workers.

Companies must protect themselves by contacting WCS to determine if the leasing company is registered with them and is compliant with all the requirements. Companies should also obtain a certificate of insurance that demonstrates the leased employees are covered by a workers compensation policy. What a company cannot do is stick its head in the sand and hope the employees are covered. Ultimately, it is the responsibility of the receiving company to ensure the employees it is using are covered.

A secondary, but related issue concerns the use of payroll service companies. Payroll service companies are not considered the employer even if the contract provides the payroll service company will pay for workers' compensation coverage. The workers' compensation must be obtained in the name of the employer even though payment for the coverage may be made through the payroll service company.

The employer is solely liable for workers' compensation and will be prosecuted if the payroll service company fails to pay for the coverage as required, resulting in the cancellation of the policy. The employer may have an action against the payroll service company for breach of contract; however, the contract does not transfer the legal responsibility for obtaining and maintaining workers' compensation.

Employers need to take responsibility for ensuring workers' compensation is maintained. Trying to abdicate their responsibilities through a contract or lease will not insulate employers from criminal liability. Employers need to exercise due diligence. Make sure the coverage is in place as evidenced by a certificate of insurance and protect yourself by making sure you receive notice of cancellation for nonpayment of premiums. If you choose to rely upon a leasing company or payroll service company to perform your legal obligations, understand you will be held responsible for not enforcing compliance. Be wise and protect yourself through diligence.

WCS contacts for employee leasing company registration are April Boehner (775) 684-7264, [aboehner@business.nv.gov](mailto:aboehner@business.nv.gov) in Carson City and Angelia Yllas (702) 486-9109, [ayllas@business.nv.gov](mailto:ayllas@business.nv.gov) in Henderson. \*

**Brian Kunzi, Director, Workers' Compensation Fraud Unit**

expected to work; a reasonable description of the physical requirements of the employment; a reasonable description of the duties the injured employee will be expected to perform; a description of any fringe benefits of the employment; and the geographical location of the employment.

2. If the insurer finds that the actual requirements of the employment at light

duty materially differ from the offer of employment and the employer fails to take corrective action, the insurer may provide vocational rehabilitation services.

3. The injured employee must be allowed a reasonable time, not to exceed 7 days after the date the offer of the employment at light duty is made to him, to accept or reject the offer.

4. If the employer

(Continued on page 4)



## 2008 Medical Fee Schedule Now in Effect

DIR/WCS has posted the latest Nevada Medical Fee Schedule Maximum Allowable Provider Payment, effective Feb. 1, 2008 – Jan. 31, 2009 (NRS 616C.260): <http://dirweb.state.nv.us/WCS/2008medfee.pdf>

The most noticeable changes in the 2008 MFS include increases per the 2007 medical consumer price index. The new MFS also increases reimbursement for a home health certified nursing assistant's visit of not more than 2 hours, making it twice the payment as a one hour visit, and the same reimbursement as skilled home health care. In addition, the time before a no show can be billed for a permanent partial disability evaluation increases to 30 minutes. Also, the CMS' 2007 group list of ambulatory surgical codes and payment groups is extended into 2008. \*

### WCS EDUCATION COMMITTEE

Dock Williams, Chair, WCS  
Mike Brooks, WCS  
Ken Webb, WCS  
Christi Mosher, Genex  
Suhair Susan Sayegh, Sierra Nv Adm  
Nancy Jennings, Sierra Nv Adm

### **SPRING 2008 TRAINING SESSIONS**

The **WCS Orientation** is a comprehensive overview of workers' compensation in Nevada. This session is beneficial for anyone involved. **Specified Forums** offer specified advanced topics. All training sessions are free and open to the public.

#### **SOUTHERN NEVADA**

Division of Industrial Relations  
1301 North Green Valley Pkwy.,  
Ste. 200, Henderson, NV 89074

#### **WCS Orientation:**

March 11, 2008  
May 22, 2008

#### **WCS Specified Forum:**

April 9, 2008

For reservations, please contact:

✉ [tsimi@business.nv.gov](mailto:tsimi@business.nv.gov)  
☎ (702) 486-9019

#### **NORTHERN NEVADA**

The Carson City / Reno sessions are tentatively scheduled at Western Nevada Community College in Carson City.

#### **WCS Orientation:**

To Be Determined

#### **WCS Specified Forum:**

To Be Determined

For reservations, please contact:

☎ (775) 684-7270

(Claims Processing, Cont. from page 1)  
Industrial Injury or Occupational Disease.”

**Physicians and Chiropractors** must work quickly to ensure that the Form C-4 is completed and sent to the correct employer and insurer/TPA within **3** working days after providing treatment (NRS 616C.040). If there is uncertainty about which insurer or TPA the Form C-4 should be sent to after treating an injured employee, their staff should first contact the injured employee. If the employee is unable to identify the insurer, they should use the WCS Coverage Verification Service: <http://dirweb.state.nv.us/WCS/cvs.htm>. If coverage is not found, the employer should be contacted. Coverage needs to be confirmed with the insurer/TPA. If still unable to verify coverage, the next step is to call WCS in Carson City, 775-684-7270, or Las Vegas, 702-486-9080. If the WCS staff cannot identify the insurer/TPA, they will ask the medical staff to send the Form C-4 and all notes relating to the steps taken to obtain coverage information to the appropriate DIR/WCS office for further investigation. Please do not send treatment/medical notes. However, medical staffs should not send the Form C-4 to WCS without prior coordination.

**Insurers/TPAs** receiving a Form C-4 from a physician or chiropractor for a claim, should verify whether the employer listed on the Form C-4 is covered by one of their policies. If there is no coverage, they have **3** working days from determination of no coverage to forward the Form C-4 to WCS (NAC 616C.1156). After which the WCS C-4 administrative staff will find the correct insurer for that employer or turn the case over to the WCS Employer Compliance Unit for investigation as a possible claim against an uninsured employer. \*



### E-mail Notification

Stay connected to what's new in the Nevada workers' compensation system by registering to receive e-mail notification of upcoming training sessions, hearings and other important events.

Simply go to the WCS Web site: <http://dirweb.state.nv.us/WCS/wcs.htm>, click on the "Update" icon and fill out the E-mail Enrollment Request Form as a new subscriber or to make updates to your current subscription.

## Timely POC Reporting Speeds Claims

Revised - Originally published March 2001

### What is POC?

"Proof of Coverage" is defined in NAC 616B.118 as the information relating to the verification of industrial insurance coverage for employers in this state.

### Who must report?

DIR/WCS designated the National Council on Compensation Insurance as its proof of coverage data collection agent back on July 1, 1999. Since then private insurers are required to report POC information to NCCI regarding their Nevada insureds.

### Why is POC reporting important?

One of the duties of WCS is to ensure employer compliance with the mandatory coverage provisions as set forth in the Nevada statutes and regulations. POC reporting enables WCS to ensure employers who are required to have industrial insurance secure and maintain coverage for their employees. In addition to ensuring a level playing field among employers, this coverage visibility is crucial for locating the proper insurer for a claim when a medical provider, after completing a Form C-4 is either unable to determine the insurer or has sent the claim to the incorrect insurer. The POC system supplies WCS with the resources to perform these important tasks along with other research functions. The WCS Coverage Verification Service is the public access portal into NCCI's insurer database. <http://dirweb.state.nv.us/WCS/cvs.htm>

### Reporting requirements: What and when?

NAC 616B.100 to 148 inclusive, outline the POC reporting requirements in Nevada. DIR/WCS has adopted the International Association of Industrial Accident Boards and Commissions POC format, a nationally accepted standard format for reporting POC data. In general, private insurers are required to report proof of coverage information to NCCI within 15 days of the following policy activities: issuance of a binder or policy; the renewal, reinstatement, reissuance, cancellation, nonrenewal or endorsement of a policy (NAC 616B.127).

### Reporting Methods: How is POC information reported?

Private insurers may report POC to NCCI by hardcopy, using the forms adopted by the DIR (Forms D-41, D-48, D-49 and D-50) or electronically using NCCI and IAABC standards. These forms, as well as all other WCS forms, are available on the WCS forms page at <http://dirweb.state.nv.us/wcs/wcsform.htm>. (Continued on page 4)

**MILEAGE REIMBURSEMENT CHANGE FOR 2008**

Effective **January 1, 2008**, standard mileage for transportation incurred while using a private vehicle for official state business increased from 48.5 cents per mile to **50.5 cents** per mile. Per **NAC 616C.150**: Under appropriate conditions, reimbursement for the cost of transportation for an injured employee must be computed at a rate equal to the mileage allowance for state employees. To minimize any underpayments of mileage reimbursements, all adjusters should note this change. \*



(Hot Topic, Cont. from page 1)

only work-related injuries are being treated. UR is a valuable tool as long as it is used properly.

Our medical unit is reviewing these procedures and is working on some additional regulations to ensure that everyone is treated fairly and medical attention is administered timely. Currently, **NRS 616A.235** and **NRS 616C.363** and **NAC 616A.600** through **660** are the only workers comp statutes and regulations that apply. DOI and the Board of Medical Examiners have their own statutes and codes. Check with them for more information. **Remember: If a UR determination negatively affects a claimant, that claimant must be given notice of his appeal rights to request dispute resolution pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive.** \*

**Ken Webb, WCS,**  
Southern District Manager

**STATE OF NEVADA**  
Holiday Office Closures:  
**Memorial Day**  
Monday, May 26, 2008

**NEVADA SCATS** Safety Consultation & Training

**APRIL IS HISPANIC SAFETY MONTH!/HABRÍLE EL MES DE SEGURIDAD PARA LOS HISPANOS!**

**Southern Nevada**  
1301 N. Green Valley Pkwy, Ste. 200  
Henderson, NV 89074  
Ph: (702) 486-9140/Fx: (702) 990-0362  
**Northern/Central Nevada**  
4600 Kietzke Lane Ste. E-144  
Reno, NV 89502  
Ph: (775) 824-4630/Fx: (775) 688-1478  
**North/Eastern Nevada**  
350 Silver Street, Ste. 210  
Elko, NV 89801  
Ph: (775) 778-3312/Fx: (775) 778-3412  
**Web site:** [www.4safenv.state.nv.us](http://www.4safenv.state.nv.us)  
Or contact us toll free at:  
1 (877) 4SAFENV / (877) 472-3368  
**To register for training classes**  
✉ [Castruita.mary@dol.gov](mailto:Castruita.mary@dol.gov)

(Confusion Corner, cont. from page 2)  
expects employment at light duty offered to be of limited duration, the employer shall tell the injured employee in the offer of employment and state the expected duration.

5. An employer must not offer temporary or permanent employment at light duty which he does not then expect to be available to the injured employee as offered.

6. An employer does not have to comply with the requirements above if the employer offers the injured employee temporary employment at light duty which is immediately available, compatible with the physical limitations of the injured employee as established by the treating physician or chiropractor; and substantially similar in terms of the location and the working hours to the position that the injured employee held at the time of his injury.

7. Temporary employment at light duty offered pursuant to subsection 6 must cease within 30 days after the injured employee's physical restrictions are determined to be permanent. Any future offers of employment at light duty by the employer must comply with the requirements of subsections 1 – 5 above.

The bottom line is that an injured employee should accept a bonafide offer of light duty that meets the statutory requirements, or the insurer will most likely terminate temporary total disability benefits, which the injured employee can then appeal but will probably not prevail. Note that the injured employee is entitled to receive for a temporary partial disability the difference between the wage earned after the injury and the compensation which the injured person would be entitled to receive if temporarily totally disabled when the wage is less than the compensation, but for a period not to exceed 24 months during the period of disability. (NRS 616C.500) \*

**HOW TO CONTACT WCS**

Department of Business and Industry (DBI)  
Division of Industrial Relations (DIR)  
Workers' Compensation Section (WCS)  
**HENDERSON**  
1301 North Green Valley Pkwy, Ste. 200  
Henderson, Nevada 89074  
Ph: (702) 486-9080 / Fax: (702) 990-0364  
**CARSON CITY**  
400 West King Street, Ste. 400  
Carson City, Nevada 89703  
Ph: (775) 684-7270 / Fax: (775) 687-6305  
<http://dirweb.state.nv.us/WCS/wcs.htm>  
[WCSHelp@business.nv.gov](mailto:WCSHelp@business.nv.gov)

(POC Reporting, Cont. from page 3)

**Reporting Errors: How are insurers notified?**

Insurers reporting POC information are notified of reporting errors in the form of error and reject reports created and disseminated by NCCI. These reports tell insurers the nature of errors requiring correction. NCCI will also send follow-up reports for errors and rejects that are not corrected within a specified period of time. WCS may also notify insurers of reporting errors, as well as the failure to report or late reporting of POC information.

**Reporting Violations: How are fines assessed?**

**NAC 616D.415** gives the administrator of DIR the authority to administer fines for the failure to submit or the late/incorrect submission of POC information to NCCI. Additional fines may be assessed for the failure of the insurer to timely correct and resubmit data for which a notice of error or reject was issued. Fines may range up to \$1,500 per occurrence, depending on the type of violation and the frequency of violations.

For more information, call NCCI Customer Service at 1-800-NCCI-123 (1-800-622-4123), visit the NCCI website at [www.ncci.com](http://www.ncci.com), or contact the WCS Research and Analysis Unit at (702) 486-9118 or via email at [wcsra@dbi.state.nv.us](mailto:wcsra@dbi.state.nv.us). \*

**WCS Welcomes New Team Members**



The newest members of the WCS Henderson employer compliance and insurer/TPA audit staff, **Bill Miller (left), Chris Brown (center) and Doug Gonzales (right)**, review NRS 616. Anyone in southern Nevada wanting to report suspected employer non-coverage or file a workers' compensation complaint, should call (702) 486-9080.

**WCS Mission Statement**

The purpose of the Workers' Compensation Section (WCS) is to impartially serve the interests of Nevada employers and employees by providing assistance, information, and a fair and consistent regulatory structure focused on:

- Ensuring the timely and accurate delivery of workers' compensation benefits.
- Ensuring employer compliance with the mandatory coverage provisions.

Direct comments or suggestions about this newsletter to: *Mike Brooks, Editor*, or *Terry Simi, Assistant Editor*, in the Workers' Compensation Section, Henderson Office (702) 486-9019 or to: [WCSHelp@business.nv.gov](mailto:WCSHelp@business.nv.gov)