

NEVADA WORKERS' COMPENSATION CHRONICLE



Department of Business & Industry (B&I)

Division of Industrial Relations (DIR)

A Publication of the Workers' Compensation Section (WCS)

Spring Edition (March - May) 2009

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.

Courtesy Notice: New Federal Reporting Requirement Armed with Big Fine

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) added new mandatory reporting requirements for group health plans, liability insurance (including self-insurance), no-fault insurance, and workers' compensation insurance. This federal law requires all liability and workers' compensation insurance companies, self-insureds and others (responsible reporting entities) to review every open claim and submit a three-page, 45-part questionnaire for every claim in which "... the settlement, judgment, award or other payment date is **July 1, 2009 or later** and claims on which ongoing responsibility for medical payments exists as of July 1, 2009, regardless of the initial acceptance of payment responsibility." The penalty for noncompliance is \$1,000 per day, per claim.

The Medicare Second Payer Statute (MSP), codified at US Code 42, Section

1395y, was enacted in 1980 to control the increasing costs of the Medicare Program, according to the [Utah Bar Journal](#). The primary aim of the MSP is to assure that primary payers, and not Medicare, assume responsibility for medical treatment for accident-related injuries. The MSP is designed to prevent a responsible third party from "shifting" the burden of an individual's medical care to the Medicare program.

The general rule under the MSP is that Medicare will not make payment for medical services if "payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a state or under an automobile or liability policy or plan (including self-insurance) or under no fault insurance." 42 U.S.C. § 1395y(b)(2)(A)(ii). However, Medicare may make "conditional payments" if a primary plan (continued on page 3)

HOT TOPIC

Donald Jayne Named New DIR Administrator

Nevada Department of Business & Industry Director Dianne Cornwall has appointed a new Administrator for the Division of Industrial Relations. Donald E. Jayne assumes his duties on March 16, 2009. He replaces Roger Bremner, who retired as DIR Administrator after 10 years in the role and more than 20 years of service for the State, including working as a legislator.

Mr. Jayne brings a strong background in industrial relations, including extensive experience in insurance operations and workers' compensation matters as General Manager of the State Industrial Insurance System in Carson City.

Mr. Jayne also has significant private sector experience in insurance, labor and regulatory matters. He was most recently principal of Jayne & Associates, Inc., a management consulting firm specializing in insurance operations, managed care operations, product development, and regulatory compliance, helping corporate, legal and governmental clients navigate labor-related regulatory issues.

"We appreciate OSHA CAO Tom Czehowski's overseeing DIR during the search for a new Administrator," said Director Cornwall. "We are pleased to now have Donald take the helm of the Division. He comes to this important role with outstanding credentials and proven experience in a number of areas key to the Division's mission."

Mr. Jayne is a (continued on page 4)

Education Committee Reminder: Payment Denials for Unrelated Services

The Workers' Compensation Section's Education Committee met on February 12, 2009. One matter of interest raised was the importance of workers' compensation stakeholders familiarizing themselves with the provisions of **NRS 616C.137** which reads as follows:

NRS 616C.137 Denial of payment for unrelated services: Requirements for notification; liability of injured employee; appeal.

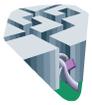
1. If an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to [NRS 616C.265](#) denies payment for some or all of the services itemized on a statement submitted by a provider of health care on the sole basis that those services were not related to the employee's industrial injury or occupational disease, the insurer, organization for managed care or employer shall, at the same time that it sends notification to the provider of health care of the denial, send a copy of the statement to the injured employee and notify the (continued on page 3)



MILEAGE REIMBURSEMENT CHANGE FOR 2009
Effective **January 1, 2009**, standard mileage for transportation incurred while using a private vehicle for official state business decreased from 58.5 cents per mile to **55 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 overpayments of mileage reimbursements, all adjusters should note this change. <http://dirweb.state.nv.us/wcs/mileage.pdf> *

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CONFUSION CORNER

COMING AND GOING RULE UPDATED

A question addressed periodically in this newsletter is “What about coming and going in workers’ comp law?” Nevada’s workers’ compensation statutes state that if an employee who is acting in the course and scope of his or her employment is injured that worker is entitled to compensation. Most injuries occur on a specific job site or at the business’ location. However, the accidents that occur in other places raise thorny coverage questions. Last May, the Nevada Supreme Court elaborated on Coming and Going, especially as related to “special errands” in the case of [Bob Allyn Masonry v. Murphy](#).

Basics of Coming and Going

In most cases, if you commute to work and you make it to the company’s parking lot, your coverage begins then. Likewise when you leave work, you are covered until you leave the lot. Here are some examples of the basic coming and going rule in workers’ compensation:

- » If your boss sends you on an errand such as going to the bank or the office supply store, then you are covered the entire time you are gone unless you deviate from that errand and take care of some personal business, such as picking up your dry cleaning or stopping by the grocery store. These are questionable deviations.
- » If a salesman in a company car is visiting clients and he’s involved in a car accident during the day, no question, he’s covered. But if he’s allowed to take the car home at night and on weekends, then is he covered if the accident occurs while he is going to the local 7-Eleven to get a Slurpee? Probably not! But what if that 7-Eleven is also a client of his? Then he might also be covered.
- » A third scenario might be if an employee takes the company’s banking with her when she goes home at night and is also doing personal banking when the accident occurs. She is probably covered because the employer had knowledge that the



FRAUD WATCH

Using the Form D-6 Aids in Preventing Fraud



Far too many cases cannot be prosecuted for lack of a basic element that is essential for a successful prosecution. Many cases fail because the insurance company or self-insured employer fails to document that a false representation was made to obtain a workers’ compensation benefit. This omission is easy to rectify simply by using the Injured Employee’s Request for Compensation ([Form D-6](#)) before paying a temporary total disability benefit.

Many of our fraud referrals involve an employee who is working for one employer while collecting benefits from another employer. The Request for Compensation, in addition to other information, asks an employee to declare if he or she has returned to work and the date the employee last worked.

If the employee, in fact, has returned to work for another employer, the employee would be making a false representation if he or she indicates he or she has not returned to work for another employer. Many insurance companies and self-insured employers believe the false statement is all that is necessary for a case to be prosecuted. Some companies and employers also believe they can pay a benefit and then submit a D-6 to the employee for his or her signature to cover past periods in the hopes of creating a false representation. Both views are flawed.

For a fraud to be actionable, the representation must be made in an effort to get a benefit. An employee who has been paid a benefit before any misrepresentation has been made did not receive that benefit as a result of the false statement(s). The timing of the misrepresentation is critical. An actionable fraud occurs only when the misstatement is made prior to the payment of the benefit, not vice versa.

Using the D-6 or some Request for Compensation form before the payment of temporary total disability benefits or vocational rehabilitation maintenance payments might be construed as a hassle. However, the inconvenience of using the form is far less than the cost of the fraud that could have been prevented.

Remember one critical point: If an employee is convicted of workers compensation fraud, the employee forfeits ALL rights to compensation. The question for insurers is simple, “Should we suffer some inconvenience today or continue to pay for the fraudulent claims tomorrow and beyond?” The answer should be obvious. Help our unit help you.

Visit the Workers’ Compensation Fraud Unit’s Web page for an overview of warning signs of workers’ compensation fraud. The unit also has a Workers’ Compensation Fraud Hotline at 1-800-266-8688 for reporting suspected fraud and asking questions regarding possible workers’ compensation fraud.

Anyone suspecting this type of fraud or any fraud associated with workers’ compensation should contact the Attorney General’s fraud hotline at **1-800-266-8688**. Other information about detecting workers’ compensation fraud is also available on our Web site: <http://ag.state.nv.us/org/bcj/wcfu/wcfu.htm>.

Brian Kunzi, Director, Workers’ Compensation Fraud Unit



errand was being done as a “special errand.”

- » What about the employee who is sent out of state for a short time? Is he covered 24-hours a day? Many insurers would probably deny these claims if they occurred outside of normal work hours. The burden of proof would be on the injured worker to show he was acting within the course and scope of his employment.

Nevada Supreme Court on ‘Special Errands’

The Court’s 2008 ruling includes the following discussion: “... It is well established that employers are not liable for injuries sustained by employees due to the hazards of daily living. Accordingly, when determining whether an injury that is sustained outside of the actual period of employment or off of the employer’s premises nonetheless arose in the (continued on page 4)

(Federal Reporting, cont. from page 1)

“has not made or cannot reasonably be expected to make payment...promptly.” 42 U.S.C. § 1395y(b)(2)(B)(i). Any such payment made by Medicare “shall be conditioned on reimbursement to the appropriate Trust Fund.”

The Centers for Medicare and Medicaid Services (CMS) is currently in the process of releasing its proposed procedures to implement Section 111 referred to by the agency as its Mandatory Insurer Reporting (MIR) guidelines. CMS has established a dedicated Web site containing its proposed MIR guidelines and other information regarding Section 111. The Web site address is <http://www.cms.hhs.gov/MandatoryInsRep> *



STATE OF NEVADA
Holiday Office Closures:
Memorial Day
Monday, May 25, 2009

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.

**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

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.

(Payment Denials, cont. from page 1)

injured employee that it has denied payment. The notification sent to the injured employee must:

(a) State the relevant amount requested as payment in the statement, that the reason for denying payment is that the services were not related to the industrial injury or occupational disease and that, pursuant to subsection 2, the injured employee will be responsible for payment of the relevant amount if he does not, in a timely manner, appeal the denial pursuant to [NRS 616C.305](#) and [616C.315](#) to [616C.385](#), inclusive, or appeals but is not successful.

(b) Include an explanation of the injured employee's right to request a hearing to appeal the denial pursuant to [NRS 616C.305](#) and [616C.315](#) to [616C.385](#), inclusive, and a suitable form for requesting a hearing to appeal the denial.

2. An injured employee who does not, in a timely manner, appeal the denial of payment for the services rendered or who appeals the denial but is not successful is responsible for payment of the relevant charges on the itemized statement.

3. To succeed on appeal, the injured employee must show that the:

(a) Services provided were related to the employee's industrial injury or occupational disease; or

(b) Insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to [NRS 616C.265](#) gave prior authorization for the services rendered and did not withdraw that prior authorization before the services of the provider of health care were rendered.

(Added to NRS by [2001_2737](#)) *

FORM FOCUS: The D-6, Injured Employee's Request for Compensation

 A new feature in the Workers' Compensation Chronicle is “Form Focus.” This brief, recurring column will spotlight various workers' compensation forms that may be overlooked or occasionally misunderstood. The form we've chosen to kickoff this series of reminders is the D-6, the Injured Employee's Request for Compensation. This form is authorized by [NRS 616C.475 \(6\)](#): “Each insurer may, with each check that it issues to an injured employee for a temporary total disability, include a form approved by the Division for the injured employee to request continued compensation for the temporary total disability.” (See Fraud Watch on page 2.)

The current D-6 is found on the WCS Forms page via this Web link:

<http://dirweb.state.nv.us/Forms/d-6.pdf> *

Hearings Division Code of Conduct**Regs in Effect**

The State of Nevada Hearings Division has adopted new regulations, effective September 29, 2008, relating to workers' compensation insurance. These regulations establish a code of conduct for hearing and appeals officers for contested cases; establish training requirements for hearing and appeals officers and revise procedures for hearings and appeals of contested cases.

The complete text of these regulations is at the Hearings Division Web site:

<http://hearings.state.nv.us/Adopted%20Regulations-Final.pdf> *

To Be, Or Not To Be (A Federal Claim), A Common Nevada Question

More than 86 percent of Nevada land is controlled by the [federal government](#). This large percentage of federal land management is the highest of any state's. WCS receives many calls from injured workers, insurers, third-party administrators and others who are confused about the jurisdictional status of a workers' comp claim that occurs on federal land.

However, to keep it simple, the first question one should ask is “Who is the employer?” For example, just because Joe's Jeweler's has a concession stand on Nellis Air Force Base that does not make him a federal employer or his workers federal employees. [Federal contracting regulations](#) spell out insurance requirements, including workers' comp, for all approved vendors operating on U.S. government land. These regulations require compliance with applicable state laws.

However, when the injured employee is actually a federal worker, an entirely different set of rules and benefits come into play. The claim is handled within a closed, federal system, irrespective of the local state's workers' compensation laws. Surprisingly, there are some who do not know if they are, in fact, a federal worker or not. We advise them to ask their supervisor if they are unsure, check their pay statements and other documentation and realize that every federal employee has a designated position number and classification (often a GS-XX, etc.) as well as a host of personnel requirements and federal benefits that are unique to federal employees.

Here is some basic information for federal employees as excerpted from the Federal Employee Poster, [Form CA-10](#):

“The Federal Employees' Compensation Act (FECA) is administered by the U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP). Benefits (continued on page 4)

(Hot Topic, cont. from page 1)

graduate of Illinois State University, with a bachelor's degree in business administration. He attained the designation of Chartered Property and Casualty Underwriter, CPCU in 1987 and is a member of the Nevada Self-Insured Workers' Compensation Sub-Committee of the Commissioner's Property and Casualty Advisory Committee. He also served as a member of Nevada's Workers' Compensation Three-Way Taskforce.

"This is a tremendous opportunity," said Mr. Jayne. "A recurrent theme in industrial relations is change and continuity, and I am honored to lead this Division as it manages those elements in the service of Nevada's citizens." *

**2009 Medical Fee Schedule
Now in Effect**

DIR/WCS has posted the latest Nevada Medical Fee Schedule Maximum Allowable Provider Payment, effective Feb. 1, 2009 – Jan. 31, 2010 (NRS 616C.260): <http://dirweb.state.nv.us/WCS/2009mfs.pdf> The 2009 MFS includes increases per the 2008 medical consumer price index (up 3.8 percent). Also, the CMS' 2007 group list of ambulatory surgical codes and payment groups is extended into 2009. *

**SPRING 2009
TRAINING SESSIONS**

The **WCS Orientation** is a comprehensive overview of workers' compensation in Nevada. This session is beneficial for anyone involved. **Specified Forums** offer training in 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 10, 2009
May 21, 2009

WCS Specified Forum:

April 8, 2009: Employers

For reservations, please contact:

✉ 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:

April 16, 2009

WCS Specified Forum:

May 14, 2009

Healthcare Provider-Front Office/CVS

For reservations, please contact:

✉ tbixler@business.nv.gov
775 684-7261

(Confusion Corner, cont. from page 2)

course of employment, we consider 'whether the employee [was] in the employer's control.' To ensure that employers are not held liable for injuries sustained when an employee is outside of the employer's control, this court has adopted the going and coming rule, which originated in tort law and 'preclud[es] compensation for most employee injuries that occur during travel to or from work.'"

The Court further contends that "... Under the special errand exception, injuries that are normally exempted from coverage on the ground that they did not arise in the course of employment are brought within the scope of coverage if they occur while the employee is in transit to or from the performance of an errand outside the employee's normal job responsibilities."

In addition: "... we [the Court] now clarify that just as injuries sustained while traveling to perform a special errand arise in the course of employment, so too do injuries sustained when returning from the performance of the special errand. But an employer's liability certainly cannot extend indefinitely beyond the performance of a special errand. It is for the fact-finder to determine, taking into account the totality of the circumstances in each individual case, when the employee ceased returning from the special errand and resumed a journey solely personal in nature.

In making this determination, the appeals officer should consider whether the location at which the injuries occurred was on a portion of the roadway that the employee would not have otherwise been if he had not been performing the special errand. An injury will not be compensable if it is sustained after the employee has resumed the personal portion of his journey, as indicated by the employee's location at the time of the accident on a portion of the roadway where the employee would have been traveling anyway to perform a task solely personal in nature. Injuries sustained after the employee is no longer returning from the special errand do not fall under its exception and are thus non-compensable under the going and coming rule."

The complete text of this ruling is available at:

<http://www.nvsupremecourt.usdocumentsadvOpinions/124NevAdvOpNo27.html> *

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

(Federal Claims, cont. from page 3)

include continuation of pay for traumatic injuries, compensation for wage loss, medical care and other assistance for job-related injury or death. For additional information about the FECA, read [pamphlet CA-11](#), "When Injured at Work" or [Federal Personnel Manual, Chapter 810, Injury Compensation](#), available from your employing agency. The agency will also give you the address of the OWCP Office which services your area.

"Every job-related injury should be reported as soon as possible to your supervisor. Injury also means any illness or disease that is caused or aggravated by the employment as well as damage to medical braces, artificial limbs and other prosthetic devices.

"Before you obtain medical treatment, ask your supervisor to authorize medical treatment by use of [form CA-16](#). You may initially select the physician to provide necessary treatment. This may be a private physician or, if available, a local Federal medical officer/hospital. Emergency medical treatment may be obtained without prior authorization. Take the form CA-16 and form OWCP-1500/HCF-1500 to the provider you select. The form [OWCP-1500/HCF-1500](#) is the billing form physicians must use to submit bills to OWCP. Hospitals and pharmacies may use their own billing forms. On occupational disease claims form CA-16 may not be issued without prior approval from OWCP."

Those with more questions should contact the United States Department of Labor, Office of Workers' Compensation Programs: <http://www.dol.gov/esa/owcp/index.htm> *

WCS EDUCATION COMMITTEE

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



**Subsequent Injury Accounts
Save Employers Money**

The Subsequent Injury Accounts encourage employers to hire workers with a permanent physical impairment. The costs of any qualified subsequent injury are paid from the appropriate subsequent injury account. (NRS 616B.557-590) For more information on the SI Accounts contact Jacque Everhart at 702 486-9089 or at everhart@business.nv.gov

