

NEVADA WORKERS' COMPENSATION CHRONICLE



Department of Business & Industry (B&I)

Division of Industrial Relations (DIR)

A Publication of the Workers' Compensation Section (WCS)

Summer Edition (June – August 2010)

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.

NEVADA INJURED WORKER INDEX SEEKS INCREASED, ELECTRONIC INPUT

There are thousands of workers' compensation claims filed in Nevada every month. [NRS 616B.018](#) requires the Division of Industrial Relations Administrator to establish a method of indexing workers' compensation claims information; establish a reporting requirement for all insurers, mandate fines for failure to report and tasks the Administrator with setting formats.

In July 1993, the Division of Industrial Relations, Workers' Compensation Section (DIR/WCS) made the Nevada Injured Worker Indexing System available for submission of initial claims information and monthly updates as specified in NRS 616B.018. The Claims Indexing System makes the information concerning claimants of a Nevada insurer available to other insurers and certain government entities. Since that time, the Section has worked to improve processing of the submitted information and increase insurer participation.

Although the system is capable of receiving electronic data, many insurers and third-party administrators (TPAs) continue to provide the information in the labor-intensive paper format. Additionally, when we compare the number of monthly claims for indexing with our Annual Claims Activity Report, it is obvious that there is a large gap in the number of indexing reports received. Monthly indexing input has stabilized at roughly 10,000 reports. Approximately half of these reports are provided in a hard copy format which requires manual entry. Recent system enhancements have significantly improved our ability to manage electronic input and process any future expansions in reporting by all insurers; those insurers currently submitting reports electronically, there should be no changes and we thank you (Continued on page 3)

INSURERS/TPAs MUST PAY IN INSTALLMENTS

Recently, it has come to light that some insurers and third-party administrators have lump sum policies in place that bypass the requirements of [NAC 616C.103\(7\)](#). This provision requires that after a disability rating is conducted that the insurer/TPA offer to the injured employee the undisputed portion in installments (see below). The Division is placing an emphasis on monitoring compliance with this regulation.

NAC 616C.103 Rating evaluation of injured employee: Requirements; award of payment; appeal.

7. If the insurer disagrees in good faith with the result of the rating evaluation, the insurer shall, within the time prescribed in NRS 616C.490:

(a) Offer the injured employee the portion of the award, in installments, which it does not dispute;

(b) Provide the injured employee with a copy of each rating evaluation performed of him; and

(c) Notify the injured employee of the specific reasons for the disagreement and his right to appeal. The notice must also set forth a detailed proposal for resolving the dispute that can be executed in 75 days, unless the insurer demonstrates good cause for why the proposed resolution will require more than 75 days. *

AMA 5th Edition Course Offered in July



Expert Medical Evaluators International offers a seminar on advanced issues and updates for the 5th Edition, American Medical Association Guides. This training is Saturday, July 17, from 7 am – 6 pm at the Hampton Inn Tropicana, Las Vegas and meets the disability rater training requirement per [NAC 616C.021](#) Lunch is included with the \$295 registration fee. More information is available at EME's Web link: <http://www.aeame.com/education.asp> or call EME International at (800) 639-1233. *

HOT TOPIC

SDM Learning on the Job

As Chuck promised in the spring Workers' Compensation Chronicle Hot Topic, I'm happy to introduce myself and a few of my ideas in this summer edition Hot Topic. I've been the WCS Southern District Manager since mid-March, and, honestly, filling Ken Webb's shoes was both a daunting and inviting challenge. I've been working in Nevada's workers' comp world for more than 25 years with various third-party administrators, insurers and other agencies; some of that time was with the old State Industrial Insurance System, better known as "SIIS." However, after returning to State service, an observation by Mark Twain comes to mind: "A man who carries a cat by the tail learns something he can learn no other way."



These past few months have been very fast-paced and educational. Here are just a few of my goals: 1) **Improved communication with all Nevada workers' compensation stakeholders.** I want all claims examiners, employers, medical providers, risk managers etc. to feel comfortable contacting us with any question about how and why we regulate the way we do. We've reallocated primary auditor, insurer/TPA oversight assignments to improve two-way feedback. I'm also working closely with Mike Brooks, WCS Education Manager, regarding more on-site training and training on-demand (e.g. June 21st Average Monthly Wage and Permanent (Continued on page 4)

- C ① Nevada Injured Worker Index
- O ① Insurers/TPAs and Disability in Installment Payments
- N ① AMA 5th Ed. Course Offered
- T ① Hot Topic: SDM Learning on the Job
- E ② Confusion Corner: WCS Help Q&As
- N ② Fraud Watch: IMEs Detect Fraud
- T ③ 2009 NRS Changes Online
- ④ State Holiday Office Closures
- ④ Summer Training: June-August
- ④ Form Focus: C-4 Changes Coming
- ④ WCS Contact Information

CONFUSION CORNER

WCS Help Qs & As

Some recent questions sent to WCS Help touch on important workers' compensation issues. Both the questions and answers are edited for confidentiality and clarity:

Q: I had a car accident when I was on duty, so my workers' comp people paid for some of my bills and my basic salary during my absence. Now my case against the driver who was at fault is settled, but I am still treating.

My attorney told me that workers comp had put a lien on my case, and that they could negotiate it, but the settlement will have to pay the lien.

The attorney said that they are going after the un-insured motorist of my own insurance for more settlement, and I was wondering if workers' comp can also put a lien (they are still paying for my basic salary since I still can't go back to work) on the case with my own insurance?

A: The short answer is that you must be provided all workers' compensation benefits for which you qualify at no cost to you. However, auto accidents may entail various subrogation agreements. See the applicable workers' compensation law below (NRS 616C.215) and consult your attorney for further detailed guidance.

NRS 616C.215 Actions and proceedings to recover damages in tort or from proceeds of vehicle insurance: Reduction of compensation by amount of recovery; rights of injured employee or dependents and of insurer or Administrator; notification and payment of insurer or Administrator; instructions to jury; calculation of employer's premium.

Q: If an employee is being harassed on a daily basis and becomes so ill they can't work is that a workers' compensation claim?

A: Sorry, but in a word: No. Please see the applicable statutes below and call me if you have any questions.

NRS 616A.265 "Injury" and "personal injury" defined.

1. "Injury" or "personal injury" means a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result which is



FRAUD WATCH

INDEPENDENT MEDICAL EXAMS DETECT FRAUD



Insurers and employers are permitted under Nevada law to request that an injured worker undergo a medical examination to determine if the injured worker is no longer disabled or entitled to continue to receive benefits. Examinations of this nature are commonly referred to as an "independent medical examination."

IMEs are commonly used in permanent total disability cases. An annual IME may be requested if there is reasonable cause to believe the injured worker is no longer disabled. One common example cited is when the worker has not received any medical treatment for an extended period of time. A PTD claimant who is disabled to an extent that prevents him or her from returning to work is likely to need ongoing medical treatment or medications. The absence of treatment raises questions about the level of disability.

An insurer discovers no medical benefits have been paid in two years. The insurer requests a surveillance of the claimant's activities. The surveillance captures the claimant performing activities that conflict with the disability. To request an IME under these circumstances is prudent and appropriate.

The danger, as is seen far too often, is an attempt by the insurers to influence the IME to obtain a favorable opinion. Any attempt to manipulate the outcome on an IME may destroy the usefulness of the examination in a criminal prosecution or even during an administrative hearing. One such method is to provide a copy of the surveillance video to the examining physician prior to the IME. If the examining physician is provided adverse information about the claimant prior to the examination, it is too easy to make the argument the physician was simply looking for medical evidence to support a claim of fraud. A true "independent" medical examination needs to consider both sides of the equation.

The better practice is to have an examination done before any adverse information is shared with the examining physician. Insurers also need to provide a complete medical history for the claimant. A well-informed examining physician can formulate an examination that will explore the extent of the disability and include representations from the claimant regarding activities he or she can or cannot perform. This can be done without the insurer trying to "direct" the nature of the examination.

The best-case scenario for a fraud prosecution is when the examining physician opines the claimant is still disabled based on the examination and the representations made by the claimant. The surveillance videos may then be presented to the examining physician. The physician can be asked if the activities depicted in the video are consistent with the manner in which the claimant presented himself during the IME and if the physician's opinion as to the disability may have been altered by the new evidence. Representations made during an IME are made for the purpose of continuing to receive PTD benefits. The opinion from an unbiased examining physician that the representations from or by the claimant were false is critical for a successful prosecution. Planting adverse information in the mind of the examining physician prior to the IME can create the appearance of a bias and hurt his or her credibility. Avoid the temptation and let the evidence speak for itself.

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

established by medical evidence, including injuries to prosthetic devices. Except as otherwise provided in subsection 3, any injury sustained by an employee while engaging in an athletic or social event sponsored by his or her employer shall be deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event.

NRS 616C.180 Injury or disease caused by stress.

1. Except as otherwise provided in this section, an injury or disease sustained by an

employee that is caused by stress is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS if it arose out of and in the course of his or her employment.

2. Any ailment or disorder caused by any gradual mental stimulus, and any death or disability ensuing therefrom, shall be deemed not to be an injury or disease arising out of and in the course of employment.

3. An injury or disease caused by stress shall be deemed to arise out of and in the course of employment only if the employee proves by clear and

(Continued on page 3)

2009 NRS Changes Now Online

The changes made by the 2009 Nevada legislative session are now available online in the completely updated **Nevada Revised Statutes (NRS)**. You can find the NRS and **Nevada Administrative Code (NAC)** relating to workers' compensation and occupational disease on the Workers' Compensation Section Web site at: <http://dirweb.state.nv.us/WCS/wcs.htm>

The statutes and regulations are divided into sections. The sections that relate to workers' compensation and occupational diseases are **NRS 616** and **NRS 617**, respectively. The sections are further divided into chapters:

- **Chapter 616A** INDUSTRIAL INSURANCE: ADMINISTRATION
- **Chapter 616B** INDUSTRIAL INSURANCE: INSURERS – LIABILITY FOR PROVISION OF COVERAGE
- **Chapter 616C** INDUSTRIAL INSURANCE: BENEFITS FOR INJURIES OR DEATHS
- **Chapter 616D** INDUSTRIAL INSURANCE: PROHIBITED ACTS -- PENALTIES -- PROSECUTION
- **Chapter 617** OCCUPATIONAL DISEASES

Once you decide which Chapter you need, you can conduct a **Find** operation. To search, follow the directions below:

1. Go to the WCS Web site.
2. In the menu on the top left hand side go to the bottom item: **Nevada Law > Nevada Revised Statutes**.
3. Choose the appropriate chapter.

Find Citations

1. Scroll to find the exact citation number you require.
2. Use the shortcuts on the left to direct you to the paragraph needed.
3. Embedded shortcuts within the statute will direct you to other relevant information.

Find Text

1. Find a Chapter you want to search.
2. On the edit menu, click on **Find**.
3. In the **Find** box, type the text or citation number you need. **(Continued on page 3) (NRS Changes, cont. from page 1)**
4. Click on **Next** box (Firefox uses up/down arrows)
5. Your browser searches the selected chapter.
6. Repeat step four until you have located the appropriate text or you have scrolled to the end of the page. (Note: Firefox has a "highlight all" option that simultaneously highlights every search result.)

Efficient ways to search for text

1. If you want to find **(Continued on page 4)**

(Confusion Corner, cont. from pg. 2)

convincing medical or evidence that:

- (a) The employee has a mental injury caused by extreme stress in time of danger;
- (b) The primary cause of the injury was an event that arose out of and during the course of his or her employment; and
- (c) The stress was not caused by his or her layoff, the termination of his or her employment or any disciplinary action taken against him or her.

4. The provisions of this section do not apply to a person who is claiming compensation pursuant to [NRS 617.457](#).

(Added to NRS by 1993, 663; A 1993, 2445) — (Substituted in revision for NRS 616.5019) *

(Injured Worker Index, cont. from page 1)

for your efforts. Insurers wanting to convert to electronic submission now should contact us for conversion information.

Our offices receive many requests for claim information from a variety of sources. However, information from the indexing system is primarily intended for the use of Nevada insurers and TPAs. [NRS 616B.012](#) provides guidance for releasing the information to other interested parties. Generally, the designated additional recipients are: (1) any claimant or his legal representative, (2) the Division of Industrial Relations and its Administrator, (3) any agency of this or any other state charged with the administration or enforcement of laws relating to industrial insurance, unemployment compensation, public assistance or labor law and industrial relations. Specific agencies include: Attorney General Workers' Compensation Fraud Unit, any state or local agency for the enforcement of child support, the Internal Revenue Service, the Department of Taxation and the State Contractor's Board.

For more information concerning reporting requirements and submission formats, contact **Jacque Steele at (775) 684-7274** or jsteele@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.

Releasing Medical Info: Workers' Comp & HIPAA

What is HIPAA and how does this law impact workers' compensation? The Health Insurance Portability and Accountability Act, better known as HIPAA, is a federal regulation designed to protect individuals' medical records and other personal and private information. HIPAA addresses how this information is used and disclosed to health plans, pharmacies, doctors and other covered entities. Some insurance entities are not covered under HIPAA. Workers' compensation is one of those entities; however, that does not mean an injured employee has to authorize, or a medical provider has to release all of an injured employee's medical information to a workers' compensation insurer; nor does the claims adjuster or workers' compensation insurer/third-party administrator have the right to whatever medical information they want concerning an injured employee. HIPAA and Nevada workers' compensation law, [NRS 616C.177](#) address what medical information can be released to a workers' compensation insurer and to other covered entities involved in the treatment of a workers' compensation injury.

The C-4 form is the official document by which an injured employee files a workers' compensation claim (NRS 616C.020). The injured employee needs to understand that by signing the C-4 and filing a claim, he or she authorizes medical providers, hospitals, insurance companies or other institutions/organizations to release information to each other. But, this authorization only relates to the injury or disease covered on the particular C-4 form.

Since the C-4 is specific to the current injury, if a claims adjuster is attempting to obtain information regarding prior claims and/or other injuries, the injured employee needs to complete a medical release identifying the pre-existing condition(s), treatments, medical providers and dates of records being requested. [NRS 616C.177](#) requires the pre-existing medical information the insurer is requesting be reasonably related to the industrial injury of the injured employee. The personal medical information requested **(Continued on page 4)**

WCS EDUCATION COMMITTEE

Mike Brooks, Chair, WCS
 Suhair (Susan) Sayegh, WCS
 Dock Williams, WCS
 Christi Mosher, Genex
 Kelly Spina, EMPLOYERS
 Cindi Rivera, Certified Vocational Srvc

FORM FOCUS: C-4

Major Change in C-4 Printing, Distribution Ahead

During February's Workers' Compensation Section (WCS) regulation hearing, our intention to stop issuing C-4 Forms was discussed. Forthcoming changes to NAC 616A.480(5) will allow the implementation of this plan. To reduce the impact of this change, WCS is developing computer-compatible copies of all three claim-related forms. Our current plan will provide prototype copies of the C-1, C-3 & C-4 Forms for use on our Web site <http://dirweb.state.nv.us/WCS/wcs.htm> as soon as they are available. We project that the forms will be posted on the site by the end of June 2010. After posting to the Web site, WCS will send a notice of availability to our e-mail notification subscribers.

The proposed forms will be accessible from our Web site, and although users will not be able to save them without renaming the file, they will be able to fill out and print the form. Additionally, we will continue to issue limited amounts of our existing, printed C-4 forms until our current stock is exhausted.

After posting of the form prototypes, anyone with issues, questions or suggestions should contact **Dock Williams** at dockwill@business.nv.gov or call him at 775-684-7283. *

(NRS Changes, cont. from page 3)

a specific word, such as "PUB," and you want to ignore the word when it occurs as part of another word such as "publication," select the "Match Whole Word Only" checkbox.

2. If you want to find text that matches the exact combination of upper and lower case letters you typed in the **Find** box, select the **Match Case** checkbox.

If you prefer, you may order hard copy and CD-ROM versions of the **Nevada Revised Statutes**, the **Nevada Administrative Code** and other official publications from Nevada Legislative Publications: <http://leg.state.nv.us/publications/> or (775) 684-6835. However, note that changes to NAC 616 are still in progress. Once codified by the Legislative Counsel Bureau, they will be posted on the WCS Web site and featured in the *Workers' Compensation Chronicle*. *

E-mail Notification

Stay connected to what's new in Nevada's workers' compensation by registering to receive e-mail notifications. <http://dirweb.state.nv.us/WCS/wcs.htm>

(WC & HIPAA, cont. from page 3)

should be the minimum necessary for the intended purpose

If you are the injured employee, [NAC 616C.079](#) requires you to sign all medical releases necessary for the insurer to obtain information and records about a pre-existing medical condition that is reasonably related to the industrial injury. You have the right to identify certain medical records and dates of medical records for release. Also, [NRS 616B.021](#) allows the injured employee, his designated agent, the employer or his designated agent, or the Administrator or his designated agent to review or receive copies of the injured employee's claim file upon written request.

Medical providers should only release medical information to the workers' compensation insurer concerning the particular injury or disease covered by the current claim and/or conditions and treatments for which a signed medical release from the injured employee has been provided.

Injured employees like any other patient have a right to copies of their provider's medical records upon receipt of the employee's written request. Please note, special authorization is required for any information concerning diagnosis, treatment and/or counseling for AIDS, psychological conditions, alcohol or controlled substance abuse. *

HOW TO CONTACT WCS

Department of Business and Industry-DBI
Division of Industrial Relations - DIR
Workers' Compensation Section - WCS

SOUTHERN NEVADA

Ph: (702) 486-9080 / Fax: (702) 990-0364

NORTHERN NEVADA

Ph: (775) 684-7270 / Fax: (775) 687-6305

<http://dirweb.state.nv.us/WCS/wcs.htm>

(Hot Topic, cont. from page 1)

Temporary and Partial Disability, see "Training Session" below) In addition, I will be participating in every bi-monthly orientation we conduct here. So I hope to meet many of you face to face.

2) **Use technology to increase productivity and efficiency.** It's no secret that the State is experiencing a budget crunch. However, there are technology-driven best practices that we can adopt from the private sector that are not costly and will improve our productivity. Plus, I want our auditors to be as technically astute as the industries they regulate. And finally

3) **Improve standardization within our agency.** This has been an ongoing initiative with all WCS leadership and, frankly, is a challenge in any large organization with a sizeable staff charged with conducting audits and investigations—ensuring a consistent approach to audits, not just the results, but the process as well. I want all stakeholders to come away from any dealing with our Southern District staff with the impression that the regulator they dealt with is both knowledgeable and fair.

Back in the 2007 summer edition Hot Topic, Ken referred to the importance of insurers and TPAs training their staff. Well, even after 25 years in this business, I've had a few of my own "cat-carrying" days since March, and surely more lie ahead. But the learning experience has been great, and I thank all of those who've provided their best wishes and helpful ideas. Keep 'em coming. You can reach me at **702-486-9105**; or e-mail ssayegh@business.nv.gov
Suhair Susan Sayegh, Southern District Manager

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: mbrooks@business.nv.gov

SUMMER 2010 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

July 6, 2010

WCS Specified Forum:

June 21, 2010 - AMW/PPD
June 24, 2010 - Insurer Reporting
August 11, 2010 - TBD

For reservations, please contact:

✉ tsimi@business.nv.gov

NORTHERN NEVADA

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

WCS Orientation:

August 26, 2010

WCS Specified Forum:

July 22, 2010
Healthcare Providers

For reservations, please contact:

✉ tmills@business.nv.gov

☎ (775) 684-7261