

NEVADA WORKERS' COMPENSATION CHRONICLE

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

Division of Industrial Relations (DIR)
Winter Edition (Dec. 2013 - Feb. 2014)

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

Don Soderberg Appointed Division of Industrial Relations Administrator



Bruce Breslow, Director of the Department of Business and Industry announced that Don Soderberg has been appointed Administrator of the Division of Industrial Relations. Mr. Soderberg is based out of the Henderson office and will oversee the Division's statewide operations.

He has more than 25 years of legal and regulatory experience which includes eight years as the Chairman of the Nevada Public Utilities Commission. He also served terms as Commissioner on the Public Utilities Commission, Nevada Transportation Services Authority and Public Service Commission of Nevada.

He most recently served as the Vice President of Risk Management and Corporate Compliance at Southwest Gas. Previously he served as Vice President of Pricing and VP of External Affairs. Prior to that, he was the Regulatory Affairs Director at R&R Partners.

Mr. Soderberg began his career in public relations and marketing. After attending law school, he practiced administrative and commercial law with Lionel Sawyer and Collins from 1987 to 1995.

He holds a bachelor's degree in Communication Studies from the University of Nevada Las Vegas and a juris doctor degree from the University of San Diego School of Law. *

HOT TOPIC

DIR Implements New Audit Process for TPAs

Pursuant to the 2011 legislative change to [NRS 616A.400\(7\)](#), which now allows the Division of Industrial Relations to conduct investigations and examinations of TPAs, the Workers' Compensation Section has created a new audit procedure called Policy, Procedures & Operations Audit (PPO Audit). These audits include, but are not limited to, the examination of the following:

- 1) Adjusters' caseloads and claims handling experience ([NRS 616C.720](#));
- 2) Verifying electronic claims systems and the calculation of benefits to ensure accurate and timely payments of benefits;
- 3) How a TPA processes timely compliance of Hearing; and (Continued on page 4)



WCS Reminds Medical Providers About Billing Procedures

This is a reminder to all healthcare providers who accept workers' compensation patients that, pursuant to [NRS 616C.135](#), a patient who has received services for an industrial injury or occupational disease may not be charged. The insurer is responsible for the charges unless the patient received services that are not related to the industrial injury or occupational disease. If the healthcare provider, managed care organization, an insurer or employer violates the provisions of this statute, the Division of Industrial Relations shall impose an administrative fine. Also, pursuant to [NRS 616C.137](#), if payment for some or all of the services is denied on the sole basis that the services were not related to the industrial injury or occupational disease, the injured employee must be sent written notification and provided with the appropriate appeal rights. *

Mileage Reimbursement Change for 2014

Effective **January 1, 2014**, standard mileage for transportation incurred while using a private vehicle for official state business decreased from 56.5 cents per mile to



56 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.

<http://dirweb.state.nv.us/wcs/mileage.pdf> *

- ① DIR Announces New Administrator
- ① WCS Issues Reminder to Medical Providers
- C ① Hot Topics: DIR Introduces New Audit Process
- O ① 2014 Mileage Reimbursement
- ② Confusion Corner: Drug-testing Injured Employees
- N ② Fraud Watch: Reporting Fraud Saves Everyone Money
- ② Hails & Farewells
- T ③ Reporting Reminders
- ③ EMPLEO Offers Free Seminars for Employers & Employees
- E ③ Form Focus: Employees Cannot be Charged for Forms
- N ③ WCS Contact Information
- ③ Winter Training: Dec 2013-Feb 2014
- T ④ WCS Community Mourns Loss of Prominent Doctor
- S ④ SIA Saves Employers Money
- ④ Changes to PPD Rating Selections
- ④ Nevada to Adopt ICD 10
- ④ WCSHelp Provides Service

CONFUSION CORNER

Workers' Comp & Drug Testing

A frequently asked question during training sessions points to a misunderstanding in Nevada's workers' compensation community that appears fairly widespread: How long after an employee reports an injury must he or she submit to a valid drug test that can be used in the acceptance or denial of that claim?

This question seems to be a straightforward query about drug testing and the workers' comp statutory timeline. What makes the question even more beguiling is that most stakeholders in the Nevada workers' compensation system have some familiarity with [NRS 616C.230](#) which covers grounds for denial, reduction or suspension of compensation; and evidence of and examination for use of alcohol or controlled substance.

Among other provisions, NRS 616C.230 states:

1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury: ... (d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name or that he was not using in accordance with the provisions of chapter [453A](#) of NRS, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

Also, regarding testing NRS 616C.230 states:

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in [NRS 50.315](#) is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in [NRS 616C.355](#).

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that

(Continued on page 3)



FRAUD WATCH

Reporting Workers' Compensation Fraud Saves Money for All Nevadans



On a bright and sunny Monday morning, less than 15 minutes into his shift at ACME Tool & Dye, machinist Joe Johnson reports a work-related injury that he says happened the previous Friday. There were no witnesses to the Friday accident. In addition, as Joe's injury claim progresses through the treatment phase, Joe refuses the latest diagnostic procedures that could confirm his injury.

Is this a valid workers' compensation injury claim, given that the first few minutes of his Monday shift could have aggravated a Friday injury that had been healing over the weekend? Or perhaps because there are three "red flags" for possible fraud in the scenario, there is a much greater likelihood that Mr. Johnson is trying to commit workers' compensation fraud. The red flags as described in the Workers' Compensation Fraud Unit's "Tips for Detecting Claimant Fraud are 1) Monday morning reporting for a Friday injury; 2) No witnesses to the accident; and 3) Refusal of diagnostic treatment to confirm an injury.

However, workers' compensation fraud involves more than just claimants. It may also involve employers or healthcare providers. Primary jurisdiction for investigating workers' compensation fraud in Nevada belongs to the Investigation Division of the Office of the Attorney General, specifically, the Workers' Compensation Fraud Unit. Workers' Compensation Fraud Investigations offices are located in Carson City, Las Vegas and Reno. These units are dedicated to investigating allegations of claimant, employer and provider fraud on behalf of the State and its insurers. The unit is also generally responsible for investigation of any fraud committed in the administration of workers' compensation.

Nevada workers' compensation is based upon principles that include "no fault" which provide benefits and protection for both the employee and the employers and cost reduction by efficiencies in number. As with other kinds of insurance, workers' compensation fraud increases the cost of premiums and adds a burden to the entire system.

The Workers' Compensation Fraud Unit's Web page http://ag.nv.gov/About/Criminal_Justice/Workers_Comp/ provides 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 questions regarding possible workers' compensation fraud.

Brian Kunzi, former Director, Workers' Compensation Fraud Unit
(Updated 11/15/2013)



Hails & Farewells



Jennifer Royce, Administrative Assistant II, recently transferred from the Nevada Department of Corrections. She has worked for the State for more than a year and is looking forward to pursuing future endeavors with the State. She has worked in sales, administration, and as a dental assistant. Jennifer was raised in Nevada and has lived here for 22 years. Jennifer enjoys spending time with her family, anything outdoors and all of the activities Nevada has to offer.

Cynthia Hernandez, Administrative Assistant I, recently moved to southern Nevada from California. She has worked in the clerical business for more than seven years. She enjoys organizing her house, going to the movies and spending time with her fiancé and family. Cynthia also enjoys photography, dancing, walking and sight-seeing. She looks forward to working with the DIR for many years to come.

(Continued on page 3)



(Hails & Farewells; cont. from page 2)

Natalie McMahon, Administrative Assistant II, has been with the WCS for more than 10 months and is having a fabulous time. She enjoys camping with her husband of 27 years and her four sons. Natalie, also enjoys any vacation that involves water.



Cris Carmona provided outstanding administrative support in the WCS Henderson office as an Administrative Assistant III to the CAO and District Manager for the past two years. She recently accepted a promotional opportunity with another State agency. Cris will be missed. We all wish her well in her future endeavors. *

WC Community Mourns Loss of Respected Colleague

The Division of Industrial Relations, Workers' Compensation Section extends condolences to the family and staff of Dr. Richard Kudrewicz. Dr. K, as he was known to many, passed away on Saturday, November 30, 2013.

He treated Nevada's injured employees and performed Permanent Partial Disability (PPD) evaluations for many years in the Las Vegas area. He was an expert in the area of PPD evaluations and many of us in the workers' compensation community frequently consulted Dr. K. He will be missed. Services were held on Friday, December 06, 2013 at Palm Northwest Mortuary. *

Winter 2013 - 2014 TRAINING SESSIONS
The **WCS Orientation** is a comprehensive overview of workers' compensation in Nevada. **Specified Forums** offer specified advanced topics. **All training sessions are free and open to the public.**

SOUTHERN NEVADA

For scheduling information in the Henderson/Las Vegas area, contact:

✉ tsimi@business.nv.gov

NORTHERN NEVADA

For scheduling information in the Carson City/Reno area, contact:

✉ tmills@business.nv.gov

Reporting Reminders



FY13 WCS Workers' Compensation Claims Activity Report and **Insurer Information Form** pursuant to **NRS 616B.009** and **NAC 616B.016** were due **December 31, 2013**. Links to the blank forms and instructions were distributed via email on November 8, 2013 and can be found on our website at <http://dirweb.state.nv.us/wcs/wcsanrp.htm> or by emailing us at WCSRA@business.nv.gov

FY12-FY13 TPA Information Form pursuant to **NAC 616A.410**, **NAC 616D.415** and **NRS 616D.120(4)** was due **November 1, 2013**. The form requesting basic TPA contact information, off-site location of records, and statewide workers' compensation claims handled data was sent via certified mail in October 2013 and can be found on our website at <http://dirweb.state.nv.us/WCS/insurer.htm>

Failure to submit the required reports may result in administrative fines.

Questions may be directed to WCS Research and Analysis at (702) 486-9080.

(Confusion Corner; cont. from page 2)

conducts the testing must be licensed pursuant to the provisions of **Chapter 652** of NRS.

However, despite the presumption of proximate cause and details verifying the presence of alcohol or a controlled substance, there is no explicit drug testing timeline in Nevada's workers' compensation statutes. Nor is there a legal requirement that an injured employee submit a drug test result.

In fact, when it comes to drug testing, workers' comp considerations are secondary to personnel policies. In most cases, the company's human resource department needs to have well-understood drug testing policies and programs already in place prior to the injury before a worker can be compelled to submit to a drug test. Ideally, the worker will have agreed to these policies in writing during the orientation phase of employment. Human resource departments have the latest information on employer and employee rights regarding drug testing.

As a reminder, even though there is no statutory timeline for testing for controlled substances, per **NRS 616C.065** insurers still have only 30 days after receiving the Form C-4 to accept a claim, begin payment and provide required notification or to deny a claim and provide required notifications. *

EMPLEO Offers Free Seminars for Employers & Employees

The **US Department of Labor, Division of Wage and Hour** sponsors the **Employment Education Outreach**. EMPELO is an alliance of employers, labor, community organizations, consulates, and federal, state, and local agencies committed to the education of employers and employees in southern Nevada. EMPELO received senatorial recognition during their 10th anniversary celebration this past September. For more information, contact the DOL at 702 388-6001. *



Kevin Jackson, Manager of the WCS, ER&A Unit, shown with Alba Jarrett, DOL, conducts a WC briefing on December 5, 2013 for EMPELO's annual employer seminar.

HCPs Cannot Charge Injured Workers for Completing Forms

The Division of Industrial Relations, Workers' Compensation Section, has been alerted to a recent trend whereby treating doctors are charging injured employees to complete workers' compensation forms.

Reportedly, injured employees are being charged to complete even the **Form C-4, Employees' Claim for Compensation/Report of Initial Treatment**. Although this practice is common in many settings regarding patients who have other types of insurance coverage or want to apply for disability benefits, it is not acceptable with workers' compensation patients. Pursuant to **NRS 616C.135**, a health care provider must charge the insurer for any treatment related to the industrial injury or occupational disease. The health care provider may charge the patient for services that are not related to the employee's industrial injury or occupational disease. Completing required forms is a function directly related to providing care for an injured employee's industrial injury or occupational disease. The required forms are the primary mechanism for health care providers to communicate with involved parties regarding an (Continued on page 4)

HOW TO CONTACT WCS

Department of Business and Industry
Division of Industrial Relations
Workers' Compensation Section
SOUTHERN NEVADA
(702) 486-9080 / Fax: (702) 990-0364
NORTHERN NEVADA
(775) 684-7270 / Fax: (775) 687-6305
<http://dirweb.state.nv.us/WCS/wcs.htm>
WCSHelp@business.nv.gov

(Hot Topic, cont. from page 1)

and Appeals Officer's Decision and Orders, Stipulated Settlements, etc.;

4) TPA date stamp process of all claim file documents (NAC 616C.082);

5) Knowledge of any DIR revised forms and how the new forms are distributed to the appropriate TPA staff, clients and employers; and

6) What processes are in place to ensure timely responses to written requests (NAC 616C.094).

Keep in mind that the PPO Audit varies from the standard five-year audit of insurers and employers. The five-year audits are scheduled based on the date when the Division of Insurance issues a Certificate of Insurance and every five years thereafter. These audits focus on the actual claim file contents, the management of claims and employers. Whereas, the PPO Audit focuses more on the TPA internal policy and procedures as they relate to the administration of Nevada workers' compensation claims. Also, like the standard five-year audits, the PPO Audit reports will be sent annually to the Nevada Legislative Counsel Bureau.

Since the PPO Audit is a new process, the WCS is still reviewing the process to determine its effectiveness at gathering the required information.

Suhair Susan Sayegh,
WCS Southern District Manager

Important Announcements
From the WCS Med Unit

The Nevada DIR will adopt the ICD 10 coding changes per the Centers for Medicare & Medicaid Services effective 10/01/2014.

Also, the DIR/WCS has posted the latest Nevada Medical Fee Schedule Maximum Allowable Provider Payment, effective Feb. 1, 2014 – Jan. 31, 2015 per NRS 616C.260: <http://dirweb.state.nv.us/WCS/2009mfs.pdf> The 2014 MFS reflects the 2013 Consumer Price Index for Medical Services. *

Direct comments or suggestions about this newsletter to: *Kevin Jackson, Editor or Terry Simi, Assistant Editor,* (702) 486-9019 or: email tsimi@business.nv.gov



Holiday Office Closures:
Martin Luther King Day
Monday, January 20, 2014
Presidents' Day
Monday, February 17, 2014

(No Charge for Forms, cont. from page 3)

individual's medical status, treatment plan and work restrictions, if any. In the workers' compensation arena, involved parties may include the injured employee, insurer, third-party administrator, employer, bill reviewer and the WCS. The required forms are also statutorily mandated.

Additionally, reimbursement in workers' compensation is primarily established by the Nevada Medical Fee Schedule, not by individual healthcare providers. It should be noted that charging an injured worker to complete workers' compensation forms may lead to disciplinary action including administrative fines. *

Subsequent Injury Account
Saves Employers Money

The Subsequent Injury Accounts, for Self-insured Employers, Associations, and Private Carriers, were originally constructed in order to help injured employees retain or acquire employment within the State of Nevada. The Accounts were also intended to be an incentive for employers to hire or retain in employment individuals that are physically challenged.



An employer that is made aware of a permanent physical impairment, as defined by statute, upon hiring an individual may request reimbursement from the appropriate Account by following the statutes and regulations that govern requests for reimbursement. An employer may also request reimbursement from the appropriate Account if they have retained an injured employee that has a qualifying permanent physical impairment once the employer has been made aware of the injured employee's condition.

Information concerning notification or submission of a claim against one of the Accounts can be found in the Nevada Revised Statutes and Nevada Administrative Codes, Chapter 616B. The NRS and NAC can be found on the WCS website:

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

A Form D-37, *Insurer's Subsequent Injury Checklist* must be completed and submitted along with all requests for reimbursement. The Form D-37 can be found on the WCS website:

<http://dirweb.state.nv.us/Forms/d-37.pdf>

Please direct any questions regarding the Subsequent Injury Accounts to Jacque Everhart at (702) 486-9089 or everhart@business.nv.gov *

PPD Rater Selection
System Changes

Since June, the Workers Compensation Section has used a new Information management system to collect and track many aspects of data. The WCS Medical Unit now uses VERSA for permanent partial disability rater selection. This new system still complies with the rotation requirements of NRS 616C.490(2)(b)



WCS' previous rater selection system included the rating examination region in Nevada as a factor in the rotation process. However, VERSA assigns raters based on the order their names appear on the rotating list regardless of the region where the rating is to occur. Therefore, many of the rotating physicians and chiropractors, who perform ratings in the various areas, may notice a decrease in the ratings assigned in some regions because ratings are now distributed by name. Any raters wanting to adjust their areas of service may contact the WCS Medical Unit, (702) 486-9095 or (775) 684-7276. *

WCS Help Provides
Answers to Your Questions

The Workers' Compensation Section provides a community outreach connection through the WCS Help email link on the WCS website. By using WCS Help, anyone with a question or concern regarding any aspect of workers' compensation in Nevada has a valuable tool to get the information they need. The questions are thoroughly researched by the appropriate WCS staff. While some questions may take longer than others to research, most are answered within 24 hours, if not sooner.

The WCS may also be contacted by phone. The southern office number is 702 486-9080 and the northern office is 775 684-7270. *

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.