

**PROPOSED REGULATION OF
THE DIVISION OF INDUSTRIAL RELATIONS OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R136-14

September 5, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 616A.400 and 616C.490; §2, NRS 616A.400.

A REGULATION relating to industrial insurance; revising provisions relating to determinations of percentage of impairment for preexisting industrial injuries or occupational diseases; repealing certain provisions relating to affidavits of businesses concerning industrial insurance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations require a rating physician or chiropractor to determine an apportionment for a previous industrial injury or occupational disease and a corresponding reduction from the percentage of impairment established for the present injury or disease if a rating evaluation was completed for the previous injury or disease. The apportionment is to be based on that previous rating evaluation regardless of the edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* used at the time of calculating the percentage of the previous impairment. (NAC 616C.490) The Nevada Supreme Court has interpreted subsection 9 of NRS 616C.490 as requiring the determination of the percentage of impairment of a previous industrial injury or occupational disease pursuant to the same methodology, including the same edition of the *Guides*, as is employed to calculate the percentage of impairment of the present injury or disease. (*PACT v. Blake*, 127 Nev. Adv. Op. 77, 265 P.3d 694 (2011)) **Section 1** of this regulation revises existing regulations to require that, regardless of what state the rating evaluation was completed in, percentages of impairment for both present and previous injury or disease are calculated using the edition of the *Guides* adopted by reference by the Division of Industrial Relations of the Department of Business and Industry in NAC 616C.002.

Existing regulations place certain requirements upon a public licensing agency accepting a written affidavit concerning the maintenance of certain types of industrial insurance in conjunction with an application for a business license pursuant to NRS 244.33505 or 268.0955. (NAC 616A.500, 616A.510) In 2011, the Nevada Legislature amended NRS 244.33505 and 268.0955, authorizing certain licensing agencies to accept applications for business licenses and supporting affidavits and attestations electronically. To resolve the conflict between the existing regulations and the 2011 statutory amendments, **section 2** of this regulation repeals NAC 616A.500 and 616A.510.

Section 1. NAC 616C.490 is hereby amended to read as follows:

616C.490 1. If any permanent impairment from which an employee is suffering following an accidental injury or the onset of an occupational disease is due in part to the injury or disease, and in part to a preexisting or intervening injury, disease or condition, the rating physician or chiropractor, except as otherwise provided in subsection ~~{9,}~~ 8, shall determine the portion of the impairment which is reasonably attributable to the injury or occupational disease and the portion which is reasonably attributable to the preexisting or intervening injury, disease or condition. The injured employee may receive compensation for that portion of his or her impairment which is reasonably attributable to the present industrial injury or occupational disease and may not receive compensation for that portion which is reasonably attributable to the preexisting or intervening injury, disease or condition. The injured employee is not entitled to receive compensation for his or her impairment if the percentage of impairment established for his or her preexisting or intervening injury, disease or condition is equal to or greater than the percentage of impairment established for the present industrial injury or occupational disease.

2. Except as otherwise provided in subsection ~~{9,}~~ 8, the rating of a permanent partial disability must be apportioned if there is a preexisting permanent impairment or intervening injury, disease or condition, whether it resulted from an industrial or nonindustrial injury, disease or condition.

3. A precise apportionment must be completed if a prior evaluation of the percentage of impairment is available and recorded for the preexisting impairment. The condition, organ or anatomical structure of the preexisting impairment must be identical with that subject to current evaluation. Sources of information upon which an apportionment may be based include, but are not limited to:

- (a) Prior ratings of the insurer;
- (b) Other ratings;
- (c) Findings of the loss of range of motion;
- (d) Information concerning previous surgeries; or
- (e) For claims accepted pursuant to NRS 616C.180, other medical or psychological records regarding the prior mental or behavioral condition.

4. ~~If a rating evaluation was completed in this State for a previous industrial injury or occupational disease involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present industrial injury or occupational disease, an apportionment must be determined by subtracting the percentage of impairment established for the previous industrial injury or occupational disease from the percentage of impairment established for the present industrial injury or occupational disease, regardless of the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment used to determine the percentage of impairment for the previous industrial injury or occupational disease.~~

~~—5.]~~ Except as otherwise provided in subsection ~~[6, if a rating evaluation was completed in another state for a previous injury or disease involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present industrial injury or occupational disease, or if no previous rating evaluation was performed,]~~ 5, the percentage of impairment for the previous injury or disease and the present industrial injury or occupational disease must be determined by using the ~~[Guide,]~~ *American Medical Association's Guides to the Evaluation of Permanent Impairment*, as adopted by reference pursuant to NAC 616C.002. The apportionment must be determined by subtracting the

percentage of impairment established for the previous injury or disease from the percentage of impairment established for the present industrial injury or occupational disease.

~~{6.}~~ 5. If precise information is not available, and the rating physician or chiropractor is unable to determine an apportionment using the ~~{Guide}~~ Guides as set forth in subsection ~~{5.}~~ 4, an apportionment may be allowed if at least 50 percent of the total present impairment is due to a preexisting or intervening injury, disease or condition. The rating physician or chiropractor may base the apportionment upon X rays, historical records and diagnoses made by physicians or chiropractors or records of treatment which confirm the prior impairment.

~~{7.}~~ 6. If there are preexisting conditions, including, without limitation, degenerative arthritis, rheumatoid variants, obesity, congenital malformations or, for claims accepted under NRS 616C.180, mental or behavioral disorders, the apportionment must be supported by documentation concerning the scope and the nature of the impairment which existed before the industrial injury or the onset of disease.

~~{8.}~~ 7. A rating physician or chiropractor shall always explain the underlying basis of the apportionment as specifically as possible by citing pertinent data in the health care records or other records.

~~{9.}~~ 8. If no documentation exists pursuant to subsection ~~{7.}~~ 6 or ~~{8.}~~ 7, the impairment may not be apportioned.

Sec. 2. NAC 616A.500 and 616A.510 are hereby repealed.

TEXT OF REPEALED SECTIONS

616A.500 Duties of public licensing authority. (NRS 616A.400)

1. A public licensing authority shall not accept an affidavit required pursuant to NRS 244.33505 or 268.0955, unless:
 - (a) Each question on the affidavit is answered or marked “NA” if the question does not apply to the applicant; and
 - (b) The affidavit is signed by the applicant before an employee of the office issuing the license.
 2. A public licensing authority shall maintain an alphabetical list of the names of those businesses to which it issues a license. The list must include, without limitation:
 - (a) The name and address of the principal owner of the business;
 - (b) The name and address of the business; and
 - (c) The class or nature of the business.
 3. The public licensing authority shall submit:
 - (a) A copy of the list required by subsection 2; and
 - (b) The name of each person who compiled the list,
- ↳ to the Administrator or the Administrator’s designated agent not later than 15 days after the end of each month during which the public licensing authority has issued a license.

4. As used in this section, “public licensing authority” means any city council, board of county commissioners or other governing body for any political subdivision of this State which requires a license to engage in a business.

616A.510 Affidavit concerning industrial insurance. (NRS 616A.400)

1. An affidavit required pursuant to NRS 244.33505 or 268.0955 must substantively conform to Form D-25 of the Workers’ Compensation Section.
2. Form D-25 is available from any office of the Workers’ Compensation Section at no cost.