

WORKERS' COMPENSATION ISSUES

Effective July 1, 1999, the employers in Nevada were given a choice of their workers' compensation provider. This Bulletin addresses numerous issues faced by employers, agents, and insurers about the competitive workers' compensation marketplace.

Advertising and Soliciting Workers' Compensation Insurance: An insurer may commence advertising workers' compensation insurance at any time **after** the insurer has received a certificate of authority that specifically includes workers' compensation as an authorized line of insurance. See Bulletins 98-001 and 98-006. An insurer, agent, or broker may not solicit, negotiate, or produce a policy of workers' compensation insurance in Nevada until all of the materials required pursuant to Section II of Bulletin 98-001 **and** Section II of Bulletin 98-002 have been filed with the Division. In no case may a policy of workers' compensation insurance have an effective date prior to July 1, 1999.

Agent and Broker Requirements: A Nevada resident agent or broker may not solicit, negotiate, or produce workers' compensation insurance unless he has successfully completed an approved course of instruction on workers' compensation insurance. See Bulletins 98-001 and 98-006. Pursuant to regulations adopted by the Commissioner, an insurer must verify that an agent or broker has completed an approved course before accepting an application for insurance from the agent or broker.

Anniversary Rating Date: In accordance with the Commissioner's Order dated December 11, 1998, the anniversary rating date for an employer obtaining workers' compensation coverage from a private carrier prior to July 1, 2000, is the date such coverage first becomes effective with the private carrier. An employer that does not obtain coverage from a private carrier will retain the anniversary date assigned by the Employers Insurance Company of Nevada. Any further changes will be in accordance with Rule I. G. of the National Council on Compensation Insurance (NCCI) Basic Manual.

Assigned Risk Plan: The NCCI administers the assigned risk plan. In accordance with NAC 686B.815 to 686B.840, inclusive, the regulations concerning the Assigned Risk Plan for workers' compensation, each insurer providing industrial insurance in the state shall:

- (a) participate in the Nevada Workers' Compensation Plan; and
- (b) subscribe to the Articles of Agreement of the National Workers' Compensation Reinsurance Pool. The two servicing carriers for the plan are Berkeley Regional Insurance Companies (BRIC) and Travelers Indemnity Company. These carriers were selected on a bid basis. To qualify for insurance under the Nevada Workers' Compensation Insurance Plan, an employer must have been declined coverage by at least two insurers.

To contact the assigned risk plan, call 1 (800) NCCI-123, then menu item 9.

Corporate Officers: NRS 616B.624 governs coverage for corporate officers. Subsection 2 states: "An officer or manager who does not receive pay for services performed as an officer, manager or employee of the corporation or company may elect to reject coverage by filing written notice thereof with the corporation or company and the insurer. The rejection is effective upon receipt of the notice by

the insurer.” Rejection privileges are limited with this statute. Any questions regarding “who MUST obtain coverage” or “who may REJECT coverage” should be referred to the Industrial Insurance Regulatory Section (IIRS) at the Division of Industrial Relations (DIR).

Contractor, Owner, and Subcontractor Responsibilities: Refer to NRS 616B.645 for determination of obligations. For more information on subcontractors, See NRS 616A.210. Any questions regarding “who MUST obtain coverage” or “who may REJECT coverage” should be referred to the Industrial Insurance Regulatory Section (IIRS) at the Division of Industrial Relations (DIR).

Countersignature Law: See Resident Agent comments below. (See NRS 680A.300.)

Deductible Plans: Effective July 1, 2000, insurance carriers may offer deductible insurance plans. Small deductible plans (up to \$5,000 deductible) must be written in accordance with NCCI manual rules and discount tables. Large deductible plans must be submitted to the division for approval prior to their effective date. All claims for any deductible plan MUST be reported on a “gross basis” in accordance with Workers’ Compensation Statistical Plan.

Employee Leasing Companies (also known as Professional Employee Organizations):
Coverage for such companies must be written in accordance with NRS 616B.670 to 616B.697, inclusive. To be eligible for treatment as an Employee Leasing Company, that company must first be registered with the Division of Industrial Relations.

Insurers should refer to NCCI Filing Item 08-NV-99, effective July 1, 1999, regarding coverage. This filing prohibits the use of a Master Policy for Employee Leasing Companies. Rates and premiums are determined in accordance with Rule IV.9. of the NCCI manual. This rule states: “Classify workers assigned to clients the same as direct employees of the client entity performing the same or similar duties. If the client has no direct employees performing the same or similar duties, leased employees are classified as if they were direct employees of the client entity.”

Employer Notification Forms: These forms were mailed to employers in May and June 1999, and indicate the transition factors for the individual employer. The same form will be used for the transition plan for year two; however, the employer, agent, or insurer must adjust the minimum and maximum rates. To receive another copy of this form, an employer, agent, or insurer should call NCCI at 1-(800)- NCCI-123. (See Transition Plan)

Group Insurance: Group Workers’ Compensation insurance must be written in accordance with NRS 616B.036 and NAC 616B.624 and 616B.626. The Commissioner must approve each group or organization before a policy may be issued for the group.

Installments: NRS 616B.224 allows insurers and employers to mutually agree on the terms for premium payment and reporting of payroll information.

Large Risk Alternative Rating Option: Rule K. of the NCCI Retrospective Rating Manual states: “A different premium eligibility level may be used if filed by an individual insurance carrier, subject to regulatory approval.” Effective July 1, 2000, the minimum premium for Nevada domiciled risks is \$100,000 Workers’ Compensation Standard Premium.

Minimum Rate Law: NRS 686B.177 allows an insurer to use rates greater than the rates

filed by the National Council on Compensation Insurance (NCCI) and approved by the Division. Rate deviations must be filed with and approved by the Division. (Use Form FFD 100 which is available on our website: <http://doi.state.nv.us>.) Pursuant to NRS 686B.177, the product of an insurer's filed rate deviation and maximum credit cannot be less than 1.0 for the year beginning July 1, 1999; .85 for the year beginning July 1, 2000. (Whether using rate deviations or schedule rating, the final rate may never be less than 85% of the approved rate during year two of this transition.) An insurer which has not made a rate deviation filing with the Division must use the approved manual rates without deviation for each of the first two years beginning July 1, 1999. Beginning July 1, 2001, the advisory organization will file pure loss costs, and each insurer will be required to file their Loss Cost Multiplier (expense provision).

Participating (Dividend) Plans: NRS 686B.1781 “[NRS 686B.1751](#) to [686B.1799](#), inclusive, do not prohibit or regulate the payment of dividends, savings, unearned premiums deposits or an equivalent abatement of premiums allowed or returned by insurers to their policyholders, members or subscribers. An insurer shall not unfairly discriminate among its policyholders in paying a dividend. A plan for the payment of dividends is not a rating system or plan. An insurer shall not condition the payment of such a dividend upon the renewal of a policy or contract by the policyholder, member or subscriber.”

Partners: Working partners are included in the definition of sole proprietors in NRS 616A.310. Questions regarding “who MUST obtain coverage” or “who may REJECT coverage” should be directed to the Industrial Insurance Regulatory Section (IIRS) of the Division of Industrial Relations (DIR).

Payroll Cap: NRS 616B.039 states: “To determine the total amount paid to employees for services performed, the maximum amount paid to any one employee during the year in which a policy of industrial insurance is effective shall be deemed to be \$36,000.” On January 27, 2000, the Commissioner adopted a new regulation, LCB File No. 140-99, which reads:

Section 1. Chapter 616B of NAC is hereby amended by adding thereto a new section to read as follows:

1. To determine the unearned premium that must be returned to an employer or the earned premium that must be paid to the insurer, as appropriate, when a policy of industrial insurance is canceled before the anniversary date of the policy or written for a term of less than 12 months:
 - (a) The limitation of \$36,000 established pursuant to NRS 616B.039 on the amount an employee is deemed to have received for services performed during the year in which a policy of industrial insurance is effective shall be deemed to be earned by that employee in increments of \$3,000 per month and, if the policy includes a period of less than a month, in daily increments of an amount that represents a proportionate distribution of \$3,000 over a month.
 - (b) Payment that is not received by an employee in even increments throughout the year in which the policy is effective shall be deemed to be paid in accordance with the rating rule for bonuses filed by the advisory organization with the commissioner pursuant to NRS 686B.177.
2. As used in this section, Aadvisory organization@ has the meaning ascribed to it in NRS 686B.1752.

Premium Discount: Exhibit II-E of the NCCI Basic Manual includes a Table of Premium

Discounts. These discounts are to be applied in accordance with the manual rules for the premium size indicated. Table A applies to AStock Companies@ and Table B applies to ANon-Stock Companies.@ An insurer may use either Table A or Table B, depending on its filing with the Division.

Rates, Rules, and Experience Modifications: NRS 686B.177(3) states, in part:
AThe rates filed by the advisory organization and approved by the commissioner apply to every insurer. In no case may an insurer's rate be **less** than the approved rate by more than the following percentages:

- (a) For the period beginning on July 1, 1999, and ending on June 30, 2000, no variance.
- (b) For the period beginning on July 1, 2000, and ending on June 30, 2001, no more than a 15% variance.@ This is the minimum rate that may be charged regardless of rate deviations or schedule rating.

Resident Agent, Nonresident Agent, and Countersignature Requirements:
NRS 680A.300

1. Except as provided in [NRS 680A.310](#), no authorized insurer may make, write, place, renew or cause to be made, placed or renewed, any policy or duplicate policy of insurance of any kind upon persons, property or risks resident, located or to be performed in this state, except through its duly appointed and licensed agents resident in this state, any one of whom shall countersign the policy.
2. Where two or more insurers jointly issue a single policy, the policy may be countersigned, on behalf of all insurers appearing thereon, by a licensed agent resident in this state of any one insurer.
3. In any case where it is necessary to execute an emergency bond and a commissioned agent authorized to execute the bond is not present, a manager or other employee of the insurer having authority under a power of attorney may execute the bond in order to produce a valid contract between the insurer and the obligee. The bond must subsequently be countersigned by a resident commissioned agent, who shall make and retain an adequate office record of the transaction.
4. Nothing contained in this section prevents exercise of the free and unlimited right to negotiate contracts by licensed nonresident agents or brokers outside this state, if the policies, endorsements or evidence of those contracts covering properties or insurable interests in this state are countersigned by a resident agent of this state. Every such policy or contract must be countersigned by a resident agent.
5. On business produced by a licensed nonresident agent or broker, which is countersigned by a resident commissioned agent of this state, there must be a division of the usual commission between the licensed nonresident producing agent or broker and the resident countersigning commissioned agent which must produce for the latter a commission of at least 5% of the premium. No commission or fee is required as to policies with an annual premium of \$250 or less. The insurer issuing any policy or bond is responsible for payment to the countersigning agent of the fee or commission for the countersignature. Where the licensed nonresident agent or broker or the insurer assuming the risk desires the resident commissioned agent to render additional services during the life of a policy, the compensation to the countersigning commissioned resident agent is a matter of contract between the parties in interest.
6. An insurer may use an endorsement to the policy for the sole purpose of countersigning the policy, as required in this section, only if:
 - (a) The endorsement is attached to the policy to which it applies; and
 - (b) The policy insures persons or property in this state and one or more other states.

Retrospective Rating Plans: An insurer intending to use the NCCI retrospective rating plan and advisory parameters is not required to submit a filing to the Commissioner; only exceptions to the NCCI Basic Manual are required to be filed. Because of administered pricing that is in effect until June 30, 2001, the NCCI parameters shall be considered the minimum parameters except for those risks qualifying for the Large Risk Alternative Rating Option (LRARO). (See Large Risk Alternative Rating Option)

Schedule Rating: The NCCI has filed a schedule rating plan to be effective on July 1, 2000 for new business or on the anniversary date for renewal business. An insurer may file a schedule of credits and debits. Nevada Administrative Code 686B.610 limits the maximum credit or debit under a schedule rating plan to 25%. In accordance with the Minimum Rate Law prescribed in NRS 686B.177, the final rate can never be lower than the approved Minimum Rate.

Sole Proprietors: NRS 616B.659 defines the options available for Sole Proprietors. A sole proprietor is not covered unless he ELECTS to be covered and pays the appropriate premium for coverage. Pursuant to NRS 616A.310, Asole proprietor means a self-employed owner of an unincorporated business and includes working partners and members of working associations. Coverage remains in effect only if the sole proprietor remains a domiciliary of Nevada. Questions regarding Awho MUST obtain coverage or Awho may REJECT coverage should be directed to the Industrial Insurance Regulatory Section (IIRS) of the Division of Industrial Relations (DIR).

Trade Restraints: NRS 686B.1782 (2) states: ANo insurer may agree to use any rate, rating plan or rating rules, other than the uniform plan for rating experience, except as necessary to comply with the provisions of this chapter concerning the activity of the advisory organization

and insurers relating to the uniform statistical plan, the uniform plan for rating experience and the uniform system of classifications of risks and the development of subclassifications.

Transition Plan: On December 28, 1998, the Commissioner approved the Premium Transition Plan recommended by the Premium Transition Program Working Group. The plan is explained in NCCI Circular NV-99-03 which has been distributed by the NCCI. The plan applies to all new, renewal, and outstanding policies effective July 1, 1999, and provides maximum and minimum net transition rates for all policyholders. The objective of the plan is to facilitate the transition to the NCCI's classification system, experience rating plan, and rate making methodology by smoothing the swings in premiums. The Employer Notifications mailed in the spring of 1999 will continue to be used for the period July 1, 2000 to June 30, 2001. (See Employer Notifications) For a copy of the Employer Notification Form, the circular, or additional information, please contact the NCCI at 1-(800) NCCI B123.

Effective July 1, 2000, the transition plan will continue with the minimum and maximum ranges expanded by an additional 20%. To determine the new minimum and maximum net rates for coverage effective on or after July 1, 2000, the rates displayed on the Employer Notification must be adjusted by the following multipliers:

Minimum Net Rate > Minimum Net Rate shown on the Employers Notification X 0.90
Maximum Net Rate > Maximum Net Rate shown on the Employers Notification X 1.36

(The 1.064 multiplier represents the rate adjustment as a result of the Law Benefit Change that was effective January 1, 2000. The 1.063 multiplier represents the premium change effective July 1, 2000.)

Unearned Premium: NCCI manual rules X. D and E were suspended for any cancellation prior to July 1, 2000. Therefore, there should not have been any short-rate cancellations for workers' compensation coverage if the cancellation was effective prior to July 1, 2000. On and after July 1, 2000, an insurer may cancel subject to the NCCI cancellation provisions identified above. Also, please refer to the Payroll Cap for short-term or canceled policies.

Bulletin 99-1 is withdrawn.

ALICE A. MOLASKY, ARMAN
Commissioner of Insurance

Division of Insurance Website: <http://doi.state.nv.us>

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