



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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Bulletin 99-001

April 1, 1999

WORKERS' COMPENSATION ISSUES

Effective July 1, 1999, the employers in Nevada will have a choice of who provides their workers' compensation insurance. This bulletin addresses numerous questions that arise daily from those insurers who are entering the workers' compensation market and from employers who are preparing to make decisions about their provider.

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 Bulletin 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 Bulletin 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 will administer the assigned risk plan. In accordance with LCB File No. R091-98, the regulation 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. On April 1, 1999, Hartford Underwriters Insurance Company and Travelers Indemnity Company were named as the two "servicing carriers," which 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. Until January 1, 2001, one of the declining carriers must be the Employers Insurance Company of Nevada.

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.

Contractor, Owner, and Subcontractor Responsibilities: Refer to NRS 616B.645 for determination of obligations. For more information on subcontractors, see NRS 616A.210.

Countersignature Law: See Resident Agent comments below.

Deductible Plans: In accordance with the Commissioner's Order dated December 11, 1998, a deductible insurance plan may not be written before July 1, 2000.

Employee Leasing Companies: Coverage for such companies is written in accordance with NRS 616B.670 to 616B.697, inclusive. 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."

Group Insurance: NRS 616B.036 states:

1. The system and private carriers may provide industrial insurance for an organization or association of employers if:
 - (a) The members of the group or organization are engaged in a common trade or business; and
 - (b) The formation and operation of a program of industrial insurance for the organization or association will substantially assist in the handling of claims and

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prevention of accidents for the employers as a group.

2. The Commissioner must approve each group or organization before a policy may be issued to it. The Commissioner has adopted regulations for the qualifications of groups for industrial insurance. See LCB File No. R111-98. The Large Risk Alternative Rating Option in the NCCI Retrospective Rating Plan Manual is not applicable to a group of employers.

Installments: NRS 616B.224(2) states: "Any employer by agreement in writing with the insurer may arrange for the payment of premiums in advance at an interval established by the insurer." NRS 686A.130(3) states: "No insured named in a policy or any employee of such insured may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement."

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." A different premium level **will not** be permitted prior to July 1, 2000.

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. Upward rate deviations must be filed with and approved by the Division. (Use Form FFD 100 which is available on our website: www.state.nv.us/b&i/id/). 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; .95 for the year beginning July 1, 2000; .90 for the year beginning July 1, 2001; and .85 for the year beginning July 1, 2002. 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 four years beginning July 1, 1999.

Participating (Dividend) Plans: NRS 686A.130(6) states: "Nothing in this section prohibits:

- (c) Any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits."

NRS 686B.1781 states: "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." (Emphasis Added) Since dividend plans are not rating plans, they do not need to be filed with the Division.

Partners: Working partners are included in the definition of sole proprietors in NRS 616A.310.

Payroll Cap: NRS 616B.039 states: "The maximum amount paid to any one employee during the year shall be deemed to be \$36,000 in determining the total amount paid to employees by each employer for services performed during a year." The Commissioner's Order dated December 11, 1998 defines "year" in this statute as "the annual period beginning with the anniversary rating date."

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 "Stock Companies" and Table B applies to "Non-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: "The rates filed by the advisory organization and approved by the commissioner apply to every insurer..." (Refer to the minimum rate law above.) NRS 686B.1772(1) states: "Every insurer shall adhere to the uniform system of classifications of risks and uniform plan for rating experience filed with the commissioner by the advisory organization." NRS 686B.1773(1) states: "Every insurer shall:... (b) Adhere to the manual of rules and uniform plan for rating experience when providing or reporting its business for industrial insurance."

Resident Agent, Nonresident Agent, and Countersignature Requirements: NRS 680A.300(1) states: "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 of whom shall countersign the policy." NRS 680A.300(5) states, in pertinent part: "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 percent of the premium."

Retrospective Rating Plans: A retrospective rating plan issued to an employer by a private carrier or Employers Insurance Company of Nevada on or after July 1, 1999, will be considered in violation of NRS 686B.177 if the maximum premium the employer could pay under the retrospective rating plan is less than the net premium the employer would have paid under a guaranteed cost plan. For example, an employer with an estimated standard premium of \$20,000 for an annual period beginning July 1, 1999, cannot be issued a retrospective rating plan with a 95 percent maximum since this plan will guarantee a maximum premium of \$19,000 which is below the premium the employer would pay (\$19,090 including premium discount) under a

guaranteed cost plan. 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.

Schedule Rating: 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 percent. 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, sole 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.

Trade Restraints: NRS 686B.1782 (2) states: "No 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 system of classifications of risks and the development of subclassifications."

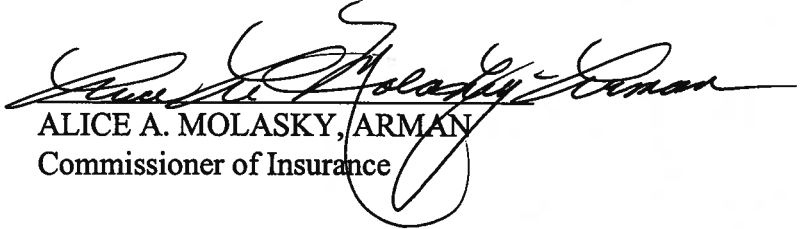
Transition Plan: On December 28, 1998, the Commissioner approved the Premium Transition Plan recommended by the Premium Transition Program Working Group. The plan is explained in NCCI Circular NV-99-03 which has been distributed by the NCCI. The plan applies to all new, renewal, and outstanding policies 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. For copies of this circular or additional information, please contact the NCCI at (800) NCCI -123 (622-4123).

Unearned Premium: Effective July 1, 1999, Rules X. D and E are suspended and, therefore, there cannot be any short-rate cancellations for workers' compensation coverage. Any policy which is canceled for any reason prior to July 1, 2000, must have the return premium calculated on a pro rata basis.

Regarding the "Payroll Cap," the law in effect until July 1, 1999, NRS 616B.224(2), reads: "In determining the total amount paid to employees by each employer for services performed during a calendar year, the maximum amount paid by each employer to any one employee during the calendar year shall be deemed to be the first \$36,000 paid to the employee during the calendar year." Since the law is clear on the application of the payroll cap for coverage prior to July 1, 1999, the portion of the \$36,000 payroll earned prior to July 1, 1999, will not be prorated if the policy is canceled prior to January 1, 2000.

NRS 616B.224 is replaced by NRS 616B.039 effective July 1, 1999. (Please refer to "Payroll Cap" above.) Under the new law, a new \$36,000 limit will begin for any new policy commencing after July 1, 1999, and will be applied on a policy year basis. Further, whenever a policy is issued

after July 1, 1999, a new \$36,000 limit applies. Since this limit will now apply on a policy year basis, the payroll cap may be prorated.



ALICE A. MOLASKY, ARMAN
Commissioner of Insurance

Division of Insurance Website: www.state.nv.us/b&i/id/

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