1. Working Group Name:

*Consumer Safety, Education and Health*

1. Individual Sponsor(s):

*Dr. John DiMuro, Chief Medical Officer, DHHS*

1. Describe the Recommendation:

*Issue: To provide recommendations that protect both the employer and employee regarding Worker’s Compensation claims which may involve W.U.I. (“Working Under the Influence”)*

*Here is the applicable section of NRS 616C.230 that presumes that if an injured person is under the influence of a controlled-prohibited substance in the amount set forth in the DUI statute (NRS 484C.110(3)) that compensation is not payable.   Another words if the injured worked tests positive for an amount that equals or exceeds the “DUI presumption statute”, then there is a presumption that the controlled-prohibited substance is the proximate cause of the accident-injury and this alone is grounds for claim denial.*

***NRS 616C.230  Grounds for denial, reduction or suspension of compensation; evidence of and examination for use of alcohol or controlled substance.***

*1.  Compensation is not payable pursuant to the provisions of* [*chapters 616A*](http://www.leg.state.nv.us/NRS/NRS-616A.html#NRS616A) *to* [*616D*](http://www.leg.state.nv.us/NRS/NRS-616D.html#NRS616D)*, inclusive, or chapter* [*617*](http://www.leg.state.nv.us/NRS/NRS-617.html#NRS617) *of NRS for an injury:*

*(d) That occurred while the employee was under the influence of a controlled or prohibited substance, unless the employee can prove by clear and convincing evidence that his or her being under the influence of a controlled or prohibited substance was not the proximate cause of the injury. For the purposes of this paragraph, an employee is under the influence of a controlled or prohibited substance if the employee had an amount of a controlled or prohibited substance in his or her system at the time of his or her injury that was equal to or greater than the limits set forth in subsection 3 of* [*NRS 484C.110*](http://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec110) *and for which the employee did not have a current and lawful prescription issued in the employee’s name.*

*(1) Per NRS 616C.230, Workman’s Compensation benefits may be denied, reduced or suspended on the basis of evidence of and examination for use of alcohol or controlled substances. While blood alcohol concentration is determined by several factors, primarily the amount of alcohol consumed, blood THC levels vary based upon multiple factors including primarily the route of consumption (oral vs inhaled). Blood concentrations will vary depending upon the potency of the marijuana and the manner in which the drug is smoked (or consumed). This difference in pharmacokinetics presents a dilemma for employers, employees and workman’s compensation insurance carriers. Upon querying other states which have enacted marijuana legislation, this issue remains open to interpretation by the parties involved in the industrial accident including the injured worker, employer, primary health insurer and the workman’s compensation insurance carrier. Primary issues to be discussed include whether WC carriers can offer a ‘rider’ to employers, whether primary health insurers will be mandated to cover the medical costs for those injured at work if the WC claim is denied, and how the providers will be compensated should the claim be denied.*

*(2) Additionally, what about those individual(s) injured by an individual under the influence of THC? Programs such as the Crime Victims Fund are federally funded and therefore will likely not assist with needed financial support to crime victims secondary to marijuana intoxication.*

*Recommendations:*

*(1) We must establish the criteria for which an industrial accident is considered employment-related versus employee related. This would then mandate the workman’s compensation insurance carrier to cover the injured worker. However, should the clinical evaluation determine the injured worker was under the influence, the worker’s compensation insurance carrier could deny the claim. The obvious objective criteria would be a blood test for TCH and/or Delta-9-THC (the primary psychoactive component of marijuana).*

*(A) Recommend: same levels for DUI (blood levels =2ng/ml or as they are amended); NRS 484C.110. Should the injured worker have levels below this threshold regardless of clinical symptomology, the WC carrier must cover the claim. If the injured worker has levels that meet or exceed 2ng/ml, then the WC carrier has the right to deny the claim.*

*(B) Recommend: Every employee is given a statement of the WC policy to verify understanding of their legal rights.*

*(C) Recommend: Health insurance companies are able to charge a ‘rider’ to those employees/employers who use marijuana. If a ‘rider’ is in force, the health insurer must cover the claim. If there is no ‘rider’, the primary health insurer can deny the claim and the injured worker is responsible for their medical care.*

*(2) We must establish the criteria for which the injured worker must undergo a blood draw. Because time is of the essence when testing THC levels, the standards set forth in NRS 484C.170 and 484C.180 may not suffice in this circumstance. This should be an objective criteria so as not to discriminate against any injured worker. This would include inquiring about a history of MJ use and using that information to decide whether to perform a blood draw. This could be construed as a discriminatory practice.*

*(A) Recommend: All injured workers must undergo blood draw for THC upon presentation for medical care due to injuries sustained during employment.*

*(3) We must provide resources for those injured due to the negligence of THC-intoxicated individuals. This becomes necessary because there will likely be no federal financial support forthcoming.*

*(A) Recommend: The creation of a “THC superfund” or “Fund of Last Resort”. This fund could be created with a 1% tax at the retail level (or TBD level) which would only tax those purchasing THC-containing products. This program would have no financial impact to the non-consumer (much like cigarettes and alcohol) and all costs to maintain the program as well as payment of claims could be made to 5% of the total fund value. Creation of such a fund could potentially financially support the injured person and keep them from entering Medicaid. This fund will obviously grow on a go-forward basis and could serve as a THC general fund in the future (if managed correctly).*

1. Which Guiding Principle(s) does this recommendation support?

*Guiding Principle 1 - Promote the health, safety, and well-being of Nevada’s communities*

*Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry*

*Guiding Principle 4- Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome*

*Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable*

1. What provision(s) of Question 2 does this recommendation apply to?

*Section 5. Powers and duties of the Department.*

1. What issue(s) does the recommendation resolve?

*Workplace injuries and possible denial of coverage on claims*

1. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

*No.*

1. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

*Discussions and alternative solutions with both Workman’s Compensation Insurance carriers and primary healthcare insurers. Possible insurance regulatory changes. Creating an “Expert Panel” for review prior to adopting regulations including input from the NAIW (Nevada Attorney’s for Injured Workers).*

1. Additional information (cost of implementation, priority according to the recommendations, etc).

*Will need to be addressed amongst business associations and the insurance industry.*

*Consider input from Nevada Attorney’s for Injured Workers.*