ASSEMBLY BILL NO. 470–ASSEMBLYMEN GOLDWATER AND BUCKLEY

MARCH 10, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning provision of benefits for workers' compensation. (BDR 53-1298)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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

AN ACT relating to workers' compensation; prohibiting organizations for managed care that provide medical and health care services to injured employees from engaging in certain practices that restrict the actions of a provider of health care; requiring a response to a request for prior authorization for medical treatment to be issued within a certain number of days; allowing an injured employee whose employer's insurer has entered into a contract with an organization for managed care or providers of health care to change treating physicians or chiropractors under certain circumstances; allowing hearing officers and appeals officers to refer an injured employee to a physician or chiropractor to determine the necessity of certain medical treatment; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 616B of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. ***An organization for managed care shall not restrict or interfere with any communication between a provider of health care and an injured employee regarding any information that the provider of health care determines is relevant to the health care of the injured employee.***

Sec. 3. ***An organization for managed care shall not terminate a contract with, demote, refuse to contract with or refuse to compensate a provider of health care solely because the provider, in good faith:***

1. Advocates in private or in public on behalf of an injured employee;

2. Assists an injured employee in seeking reconsideration of a determination by the organization for managed care to deny coverage for a medical or health care service; or

3. Reports a violation of law to an appropriate authority.

Sec. 4. ***1. An organization for managed care shall not offer or pay any type of material inducement, bonus or other financial incentive to a provider of health care to deny, reduce, withhold, limit or delay specific medically necessary medical or health care services to an injured employee.***

2. The provisions of this section do not prohibit an arrangement for payment between an organization for managed care and a provider of health care that uses financial incentives, if the arrangement is designed to provide an incentive to the provider of health care to use medical and health care services effectively and consistently in the best interest of the treatment of the injured employee.

Sec. 5. NRS 616B.515 is hereby amended to read as follows:

616B.515 1. Except as otherwise provided in NRS 616B.518, the manager may enter into a contract or contracts with one or more organizations for managed care, including health maintenance organizations, to provide comprehensive medical and health care services to injured employees whose employers are insured by the system for injuries and diseases that are compensable under chapters 616A to 617, inclusive, of NRS. The contract or contracts must be awarded pursuant to reasonable competitive bidding procedures as established by the manager.

2. After the selection of an organization for managed care, the bids received by the manager and the records related to the bidding are subject to review by any member of the public upon request.

3. An organization for managed care or a health maintenance organization ~~[shall]~~ ***chosen pursuant to this section:***

(a) Shall not discriminate against or exclude a provider of health care from participation in the organization's proposed plan for providing medical and health care services because of race, creed, sex, national origin, age or disability.

(b) Shall comply with the provisions of sections 2, 3 and 4 of this act.

Sec. 6. NRS 616B.527 is hereby amended to read as follows:

616B.527 A self-insured employer, an association of self-insured public or private employers or a private carrier may:

1. Enter into a contract or contracts with one or more organizations for managed care to provide comprehensive medical and health care services to employees for injuries and diseases that are compensable pursuant to chapters 616A to 617, inclusive, of NRS.

2. Enter into a contract or contracts with providers of health care, including, without limitation, physicians who provide primary care,

specialists, pharmacies, physical therapists, radiologists, nurses, diagnostic facilities, laboratories, hospitals and facilities that provide treatment to outpatients, to provide medical and health care services to employees for injuries and diseases that are compensable pursuant to chapters 616A to 617, inclusive, of NRS.

3. Use the services of an organization for managed care that has entered into a contract with the manager pursuant to NRS 616B.515, but is not required to use such services.

4. Require employees to obtain medical and health care services for their industrial injuries from those organizations and persons with whom the self-insured employer, association or private carrier has contracted pursuant to subsections 1 and 2, or as the self-insured employer, association or private carrier otherwise prescribes.

5. Require employees to obtain the approval of the self-insured employer, association or private carrier before obtaining medical and health care services for their industrial injuries from a provider of health care who has not been previously approved by the self-insured employer, association or private carrier.

6. An organization for managed care with whom a self-insured employer, association of self-insured public or private employers or a private carrier has contracted pursuant to this section shall comply with the provisions of sections 2, 3 and 4 of this act.

Sec. 7. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. An insurer, organization for managed care or third-party administrator shall respond to a written request for prior authorization for:

(a) Treatment;

(b) Diagnostic testing; or

(c) Consultation,

within 5 working days after receiving the written request.

2. If the insurer, organization for managed care or third-party administrator fails to respond to such a request within 5 working days, authorization shall be deemed to be given. The insurer, organization for managed care or third-party administrator may subsequently deny authorization.

3. If the insurer, organization for managed care or third-party administrator subsequently denies a request for authorization submitted by a provider of health care for additional visits or treatments, it shall pay for the additional visits or treatments actually provided to the injured employee, up to the number of treatments for which payment is requested by the provider of health care before the denial of authorization is received by the provider.

Sec. 8. NRS 616C.090 is hereby amended to read as follows:

616C.090 1. The administrator shall establish a panel of physicians and chiropractors who have demonstrated special competence and interest in industrial health to treat injured employees under chapters 616A to 616D, inclusive, of NRS. Every employer whose insurer has not entered into a contract with an organization for managed care ***or with providers of health care services*** pursuant to NRS 616B.515 ***or 616B.527*** shall maintain a list of those physicians and chiropractors on the panel who are reasonably accessible to his employees.

2. An injured employee whose ***employer's*** insurer has not entered into a contract with an organization for managed care ***or with providers of health care services pursuant to NRS 616B.515 or 616B.527*** may choose his treating physician or chiropractor from the panel of physicians and chiropractors. If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor from the panel if the choice is made within 90 days after his injury. The insurer shall notify the first physician or chiropractor in writing. The notice must be postmarked within 3 working days after the insurer receives knowledge of the change. The first physician or chiropractor must be reimbursed only for the services he rendered to the injured employee up to and including the date of notification. Any further change is subject to the approval of the insurer, which must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee.

3. An injured employee ~~[employed or residing in any county in this state]~~ whose ***employer's*** insurer has entered into a contract with an organization for managed care ***or with providers of health care services pursuant to NRS 616B.515 or 616B.527*** must choose his treating physician or chiropractor pursuant to the terms of that contract. ***If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor pursuant to the terms of the contract if the choice is made within 90 days after his injury.*** If the ***injured*** employee, after choosing his treating physician or chiropractor, moves to a county which is not served by the organization for managed care ***or providers of health care named in the contract*** and the insurer determines that it is impractical for the ***injured*** employee to continue treatment with the physician or chiropractor, the ***injured*** employee must choose a treating physician or chiropractor who has agreed to the terms of that contract unless the insurer authorizes the ***injured*** employee to choose another physician or chiropractor.

4. Except when emergency medical care is required and except as otherwise provided in NRS 616C.055, the insurer is not responsible for any charges for medical treatment or other accident benefits furnished or ordered by any physician, chiropractor or other person selected by the ***injured*** employee in disregard of the provisions of this section or for any compensation for any aggravation of the ***injured*** employee's injury attributable to improper treatments by such physician, chiropractor or other person.

5. The administrator may order necessary changes in a panel of physicians and chiropractors and shall suspend or remove any physician or chiropractor from a panel for good cause shown.

6. An injured employee may receive treatment by more than one physician or chiropractor if the insurer provides written authorization for such treatment.

Sec. 9. NRS 616C.305 is hereby amended to read as follows:

616C.305 1. Except as otherwise provided in subsection 3, any person who is aggrieved by a ~~[decision]~~ ***final determination*** concerning accident benefits made by an organization for managed care which has contracted with an insurer must, within 14 days of the ~~[decision]~~ ***determination*** and before requesting a resolution of the dispute pursuant to NRS 616C.345 to 616C.385, inclusive, appeal that ~~[decision]~~ ***determination*** in accordance with the procedure for resolving complaints established by the organization for managed care.

2. The procedure for resolving complaints established by the organization for managed care must be informal and must include, but is not limited to, a review of the appeal by a qualified physician or chiropractor who did not make or otherwise participate in making the ~~[decision.]~~ ***determination.***

3. If a person appeals a final determination pursuant to a procedure for resolving complaints established by an organization for managed care and the dispute is not resolved within 14 days after it is submitted, he may request a resolution of the dispute pursuant to NRS 616C.345 to 616C.385, inclusive.

Sec. 10. NRS 616C.330 is hereby amended to read as follows:

616C.330 1. The hearing officer shall:

(a) Within 5 days after receiving a request for a hearing, set the hearing for a date and time within 30 days after his receipt of the request;

(b) Give notice by mail or by personal service to all interested parties to the hearing at least 15 days before the date and time scheduled; and

(c) Conduct hearings expeditiously and informally.

2. The notice must include a statement that the injured employee may be represented by a private attorney or seek assistance and advice from the Nevada attorney for injured workers.

3. If necessary to resolve a medical question concerning an injured employee's condition ~~[,]~~ ***or to determine the necessity of treatment for which authorization for payment has been denied,*** the hearing officer may refer the employee to a physician or chiropractor chosen by the hearing officer. If the medical question concerns the rating of a permanent disability, the hearing officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians and chiropractors maintained by the administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any medical examination requested by the hearing officer.

4. The hearing officer may allow or forbid the presence of a court reporter and the use of a tape recorder in a hearing.

5. The hearing officer shall render his decision within 15 days after:

(a) The hearing; or

(b) He receives a copy of the report from the medical examination he requested.

6. The hearing officer shall render his decision in the most efficient format developed by the chief of the hearings division of the department of administration.

7. The hearing officer shall give notice of his decision to each party by mail. He shall include with the notice of his decision the necessary forms for appealing from the decision.

8. Except as otherwise provided in NRS 616C.380, the decision of the hearing officer is not stayed if an appeal from that decision is taken unless an application for a stay is submitted by a party. If such an application is submitted, the decision is automatically stayed until a determination is made on the application. A determination on the application must be made within 30 days after the filing of the application. If, after reviewing the application, a stay is not granted by the hearing officer or an appeals officer, the decision must be complied with within 10 days after the refusal to grant a stay.

Sec. 11. NRS 616C.345 is hereby amended to read as follows:

616C.345 1. Any party aggrieved by a decision of the hearing officer relating to a claim for compensation may appeal from the decision by filing a notice of appeal with an appeals officer within 30 days after the date of the decision.

2. If a dispute is required to be submitted to a procedure for resolving complaints pursuant to NRS 616C.305 and:

(a) A final ~~[decision]~~ ***determination*** was rendered pursuant to that procedure; or

(b) The dispute was not resolved pursuant to that procedure within 14 days after it was submitted,

any party to the dispute may file a notice of appeal within 70 days after the date on which the final ~~[decision]~~ ***determination*** was mailed to the employee, or his dependent, or the unanswered request for resolution was submitted. Failure to render a written ~~[decision]~~ ***determination*** within 30 days after receipt of such a request shall be deemed by the appeals officer to be a denial of the request.

3. Except as otherwise provided in NRS 616C.380, the filing of a notice of appeal does not automatically stay the enforcement of the decision of a hearing officer or a ~~[decision]~~ ***determination*** rendered pursuant to NRS 616C.305. The appeals officer may order a stay, when appropriate, upon the application of a party. If such an application is submitted, the decision is automatically stayed until a determination is made concerning the application. A determination on the application must be made within 30 days after the filing of the application. If a stay is not granted by the officer after reviewing the application, the decision must be complied with within 10 days after the date of the refusal to grant a stay.

4. Except as otherwise provided in this subsection, the appeals officer shall, within 10 days after receiving a notice of appeal pursuant to this section or a contested claim pursuant to subsection 5 of NRS 616C.315, schedule a hearing on the merits of the appeal or contested claim for a date and time within 90 days after his receipt of the notice and give notice by mail or by personal service to all parties to the matter and their attorneys or agents at least 30 days before the date and time scheduled. A request to schedule the hearing for a date and time which is:

(a) Within 60 days after the receipt of the notice of appeal or contested claim; or

(b) More than 90 days after the receipt of the notice or claim,

may be submitted to the appeals officer only if all parties to the appeal or contested claim agree to the request.

5. An appeal or contested claim may be continued upon written stipulation of all parties, or upon good cause shown.

6. Failure to file a notice of appeal within the period specified in subsection 1 or 2 may be excused if the party aggrieved shows by a preponderance of the evidence that he did not receive the notice of the ~~[decision]~~ ***determination*** and the forms necessary to appeal the ~~[decision.]~~ ***determination.*** The claimant, employer or insurer shall notify the hearing officer of a change of address.

Sec. 12. NRS 616C.360 is hereby amended to read as follows:

616C.360 1. A stenographic or electronic record must be kept of the hearing before the appeals officer and the rules of evidence applicable to contested cases under chapter 233B of NRS apply to the hearing.

2. The appeals officer must hear any matter raised before him on its merits, including new evidence bearing on the matter.

3. If necessary to resolve a medical question concerning an injured employee's condition ~~[,]~~ ***or to determine the necessity of treatment for which authorization for payment has been denied,*** the appeals officer may refer the employee to a physician or chiropractor chosen by the appeals officer. If the medical question concerns the rating of a permanent disability, the appeals officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians or chiropractors maintained by the administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any examination requested by the appeals officer.

4. Any party to the appeal or the appeals officer may order a transcript of the record of the hearing at any time before the seventh day after the hearing. The transcript must be filed within 30 days after the date of the order unless the appeals officer otherwise orders.

5. The appeals officer shall render his decision:

(a) If a transcript is ordered within 7 days after the hearing, within 30 days after the transcript is filed; or

(b) If a transcript has not been ordered, within 30 days after the date of the hearing.

6. The appeals officer may affirm, modify or reverse any decision made by the hearing officer and issue any necessary and proper order to give effect to his decision.

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