SENATE BILL NO. 55–COMMITTEE ON COMMERCE AND LABOR

PREFILED JANUARY 28, 1999

(ON BEHALF OF LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION)

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes regarding industrial insurance. (BDR 53-387)

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 industrial insurance; requiring hearing officers, appeals officers and appeals panels to author their own decisions; requiring the senior appeals officer to conduct written evaluations of the appeals officers employed by the hearings division of the department of administration; authorizing a party aggrieved by a decision of an appeals officer to appeal from that decision to an appeals panel; requiring the chief of the hearings division to appoint appeals officers; requiring an appeals officer to have a certain amount of experience practicing law in claims for compensation for industrial injuries before his appointment; requiring the chief of the hearings division to adopt regulations that govern the conduct of hearing and appeals officers; requiring the chief of the hearings division to prescribe by regulation the training, continuing education and standards for performance of appeals officers and compile certain information regarding the performance of appeals officers; 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. NRS 616A.450 is hereby amended to read as follows:

616A.450 1. Any claimant may request the appointment of the Nevada attorney for injured workers to represent him. The request must be made in writing.

2. The appeals officer ***, appeals panel*** or administrator, as the case may be, shall consider each request within a reasonable time and shall make any inquiry as **[**~~he~~**]** ***the appeals officer, appeals panel or administrator*** deems necessary. If **[**~~he~~**]** ***the appeals officer, appeals panel or administrator*** finds that the claimant would be better served by legal representation in the case,

~~[~~he~~]~~ ***the appeals officer, appeals panel or administrator*** shall appoint the Nevada attorney for injured workers to represent the claimant. Once the Nevada attorney for injured workers has been appointed to represent a claimant, the Nevada attorney for injured workers is authorized to represent the claimant at any level of proceedings if, in the opinion of the Nevada attorney for injured workers, the representation is necessary.

Sec. 2. NRS 616A.455 is hereby amended to read as follows:

616A.455 1. Except as otherwise provided in subsection 3, the Nevada attorney for injured workers shall, when appointed by an appeals officer ***, an appeals panel*** or the administrator, represent without charge a claimant before the appeals officer, ***appeals panel,*** administrator, district court or supreme court. In addition, the Nevada attorney for injured workers may give advice regarding a claimant's rights before a hearing officer and the procedure for enforcing those rights.

2. When representing a claimant, the Nevada attorney for injured workers shall:

(a) Advise the claimant and present his case to the appeals officer ***,*** ***appeals panel*** or administrator; and

(b) Present in the district court or supreme court an appeal from the decision of the appeals officer ***, appeals panel*** or administrator if, in the opinion of the Nevada attorney for injured workers, the appeal is merited.

3. If the Nevada attorney for injured workers determines, in accordance with the guidelines adopted pursuant to subsection 4, that a claim is frivolous or lacks merit, he may refuse to represent a claimant.

4. The Nevada attorney for injured workers shall establish the policies to be followed in determining whether a claim is frivolous or lacks merit.

Sec. 3. NRS 616B.018 is hereby amended to read as follows:

616B.018 1. The administrator shall establish a method of indexing claims for compensation that will make information concerning the claimants of an insurer available to other insurers and the fraud control unit for industrial insurance established pursuant to NRS 228.420.

2. Every insurer shall provide information as required by the administrator for establishing and maintaining the index of claims.

3. If an employee files a claim with an insurer, the insurer is entitled to receive from the administrator a list of the prior claims of the employee. If the insurer desires to inspect the files related to the prior claims, he must obtain the written consent of the employee.

4. Any information obtained from the index of claims must be admitted into evidence in any hearing before an appeals officer, ***an appeals panel,*** a hearing officer or the administrator.

5. The division may assess and collect a reasonable fee for its services provided pursuant to this section. The fee must be payable monthly or at such other intervals as determined by the administrator.

6. If the administrator determines that an insurer has intentionally failed to provide the information required by this section, the administrator shall impose an administrative fine of $1,000 for each initial violation, or a fine of $10,000 for a second or subsequent violation.

Sec. 4. NRS 616B.215 is hereby amended to read as follows:

616B.215 1. Except as otherwise provided in subsection 2:

(a) A principal contractor or an owner of property acting as a principal contractor aggrieved by a letter issued pursuant to NRS 616B.645; or

(b) An employer aggrieved by a determination made pursuant to NRS 616C.585,

may appeal from the letter or determination by filing a notice of appeal with the administrator within 30 days after the date of the letter or determination.

2. An employer shall not seek to remove costs that have been charged to his account by appealing to the administrator any issue that relates to a claim for compensation if the issue was raised or could have been raised before a hearing officer ***,*** ~~[or]~~ an appeals officer ***or an appeals panel*** pursuant to NRS 616C.315 or 616C.345 ~~[.]~~ ***or section 8 of this act, respectively.***

3. The decision of the administrator is the final and binding administrative determination of an appeal filed pursuant to this section, and the whole record consists of all evidence taken at the hearing before the administrator and any findings based thereon.

Sec. 5. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 6 to 9, inclusive, of this act.

Sec. 6. ***1. A hearing officer, an appeals officer or an appeals panel:***

(a) Shall, with respect to each appeal or contested claim for compensation, make its own findings of fact, reach its own conclusions of law and author the decision it renders; and

(b) Shall not solicit or accept findings of fact, conclusions of law or decisions that have been drafted or proposed by another person or governmental entity.

2. The provisions of this section do not prohibit a hearing officer, an appeals officer or an appeals panel from soliciting or accepting assistance with the copying, printing, typing or processing of the text of findings of fact, conclusions of law or decisions, if such services do not extend to assistance with creating the substantive content of such documents.

Sec. 7. ***The senior appeals officer shall:***

1. At least twice each year, conduct an evaluation of the performance of each of the other appeals officers employed by the hearings division of the department of administration. In conducting an evaluation pursuant

to this section, the senior appeals officer shall determine whether the appeals officer being evaluated has:

(a) Met the standards for performance prescribed by the chief of the hearings division pursuant to NRS 616C.295; and

(b) Rendered decisions in contested claims for compensation in a timely manner as required pursuant to subsection 5 of NRS 616C.360.

2. Within 15 days after completing an evaluation pursuant to subsection 1, prepare a written report of the evaluation and transmit a copy to the chief of the hearings division of the department of administration for compilation pursuant to NRS 616C.295.

3. In accordance with the requirements for training and continuing education, standards and procedures prescribed by the chief of the hearings division of the department of administration pursuant to NRS 616C.295, provide training to each of the other appeals officers employed by the hearings division.

Sec. 8. *1. A party aggrieved by a decision of an appeals officer relating to a claim for compensation may appeal from the decision by filing a notice of appeal with the senior appeals officer within 15 days after the date of the decision.*

2. Upon the receipt of a notice of appeal filed pursuant to subsection 1, the senior appeals officer shall appoint an appeals panel that consists of three appeals officers, none of whom may be the appeals officer who rendered the decision from which the aggrieved party is appealing.

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 an appeals officer. The appeals panel 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 panel after reviewing the application, the decision must be complied with within 10 days after the date of the refusal to grant the stay.

4. Except as otherwise provided in this subsection, the appeals panel shall, within 10 days after receiving a notice of appeal pursuant to this section, schedule a hearing on the merits of the appeal for a date and time within 45 days after its 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. The appeals panel may, upon request, schedule the hearing for a date and time that is not within 45 days after the appeals panel received the notice of appeal if all parties to the appeal agree to the request. Notice given pursuant to this subsection must include a statement that a party who is an injured

employee may be represented by a private attorney or seek assistance and advice from the Nevada attorney for injured workers.

5. An appeal 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 may be excused if the party aggrieved shows by a preponderance of the evidence that he did not receive the notice of the decision and the forms necessary to appeal the decision. The claimant, employer or insurer shall notify the appeals officer of a change of address.

Sec. 9. ***1. A stenographic or electronic record must be kept of the hearing before an appeals panel, and the rules of evidence applicable to contested cases pursuant to chapter 233B of NRS apply to the hearing.***

2. The scope of a hearing before an appeals panel is limited to determining whether substantial evidence existed to support the decision rendered by the appeals officer.

3. If necessary to resolve a medical question concerning an injured employee's condition, an appeals panel may refer the employee to a physician or chiropractor chosen by the appeals panel. If the medical question concerns the rating of a permanent disability, the appeals panel 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 panel.

4. A party to the appeal or the appeals panel 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 panel otherwise orders.

5. An appeals panel shall render its 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. An appeals panel may affirm, modify or reverse a decision made by the appeals officer and issue any necessary and proper order to give effect to its decision.

7. The decision of an appeals panel must be based upon the affirmative vote of at least two of the three appeals officers appointed to the panel.

8. The decision of an appeals panel is the final and binding administrative determination of a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, and the whole record consists of all evidence taken at the hearing before the appeals officer and any findings of fact and conclusions of law based thereon.

Sec. 10. NRS 616C.050 is hereby amended to read as follows:

616C.050 1. An insurer shall provide to each claimant:

(a) Upon written request, one copy of any medical information concerning his injury or illness.

(b) A statement which contains information concerning the claimant's right to:

(1) Receive the information and forms necessary to file a claim;

(2) Select a treating physician or chiropractor in accordance with the provisions of NRS 616C.090;

(3) Request the appointment of the Nevada attorney for injured workers to represent him before the appeals officer ~~[,]~~ ***or the appeals panel;***

(4) File a complaint with the administrator;

(5) When applicable, receive compensation for:

(I) Permanent total disability;

(II) Temporary total disability;

(III) Permanent partial disability;

(IV) Temporary partial disability; or

(V) All medical costs related to his injury or disease;

(6) Receive services for rehabilitation if his injury prevents him from returning to gainful employment;

(7) Review by a hearing officer of any determination or rejection of a claim by the insurer within the time specified by statute; and

(8) Judicial review of any final decision within the time specified by statute.

2. The administrator shall adopt regulations for the manner of compliance by an insurer with the provisions of subsection 1.

Sec. 11. NRS 616C.140 is hereby amended to read as follows:

616C.140 1. Any employee who is entitled to receive compensation under chapters 616A to 616D, inclusive, of NRS shall, if:

(a) Requested by the insurer or employer; or

(b) Ordered by an appeals officer ***, an appeals panel*** or a hearing officer,

submit himself for medical examination at a time and from time to time at a place reasonably convenient for the employee, and as may be provided by the regulations of the division.

2. If the insurer has reasonable cause to believe that an injured employee who is receiving compensation for a permanent total disability is

no longer disabled, the insurer may request the employee to submit to an annual medical examination to determine whether the disability still exists. The insurer shall pay the costs of the examination.

3. The request or order for an examination must fix a time and place therefor, with due regard for the nature of the medical examination, the convenience of the employee, his physical condition and his ability to attend at the time and place fixed.

4. The employee is entitled to have a physician or chiropractor, provided and paid for by him, present at any such examination.

5. If the employee refuses to submit to an examination ordered or requested pursuant to subsection 1 or 2 or obstructs the examination, his right to compensation is suspended until the examination has taken place, and no compensation is payable during or for the period of suspension.

6. Any physician or chiropractor who makes or is present at any such examination may be required to testify as to the result thereof.

Sec. 12. NRS 616C.225 is hereby amended to read as follows:

616C.225 1. Except as otherwise provided in this section, if an insurer determines that an employee has knowingly misrepresented or concealed a material fact to obtain any benefit or payment under the provisions of chapters 616A to 616D, inclusive, of NRS, the insurer may deduct from any benefits or payments due to the employee, the amount obtained by the employee because of the misrepresentation or concealment of a material fact. The employee shall reimburse the insurer for all benefits or payments received because of the willful misrepresentation or concealment of a material fact.

2. An employee who is aggrieved by a determination of an insurer made pursuant to subsection 1 may appeal that determination pursuant to NRS 616C.315 to 616C.385, inclusive ~~[.]~~ ***, and sections 6 to 9, inclusive, of this act.*** If the final decision by an appeals officer ***or an appeals panel*** is favorable to the employee, the administrator shall order the insurer to pay $2,000 to that employee, in addition to any benefits or payments the employee is entitled to receive, if the administrator determines that the insurer had no reasonable basis for believing that the employee knowingly misrepresented or concealed a material fact to obtain any benefit or payment.

3. If an employee elects to receive his award for a permanent partial disability in a lump sum pursuant to NRS 616C.495 and a criminal action is brought against the employee for an alleged violation of NRS 616D.300, the insurer shall, upon receiving notice of the action and until a judgment is entered in the action, pay reasonable portions of the lump-sum award in monthly installments. If the employee is not convicted of the alleged violation, the insurer shall pay the employee the balance of the award in a

lump sum. The provisions of subsection 2 do not apply to require any additional payment at the conclusion of a criminal action.

4. This section does not preclude an insurer from making an investigation pursuant to, or pursuing the remedies provided by, NRS 616D.300.

Sec. 13. NRS 616C.235 is hereby amended to read as follows:

616C.235 1. Except as otherwise provided in subsection 2:

(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant. The notice must include a statement that if the claimant does not agree with the determination, he has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive ~~[.]~~ ***, and sections 6 to 9, inclusive, of this act.*** A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If the medical benefits required to be paid for a claim are less than $500, the claim closes automatically if the claimant does not receive medical treatment for the injury for at least 12 months. The claimant may not appeal the closing of such a claim.

Sec. 14. NRS 616C.295 is hereby amended to read as follows:

616C.295 The chief of the hearings division of the department of administration shall:

1. Prescribe by regulation ~~[the]~~ ***:***

(a) The qualifications and training required before a person may, pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, serve as a hearing officer. Training for a hearing officer must include techniques of mediation.

(b) The training and continuing education required of each person employed by the hearings division as an appeals officer.

(c) Standards for the performance of appeals officers in handling appeals and contested claims for compensation, including, without limitation, standards that require an appeals officer to render a decision in each appeal and contested claim in a manner that is consistent with:

(1) Legal authority; and

(2) Other decisions, if any, rendered by that appeals officer with respect to appeals and contested claims in which the facts and issues were substantially similar.

(d) Procedures to improve the performance of an appeals officer whom the senior appeals officer determines by evaluation pursuant to section 7 of this act to be performing in a substandard manner.

2. Provide for the expediting of the hearing of cases that involve the termination or denial of compensation.

3. At least once each year, compile the following information with respect to each appeals officer employed by the hearings division of the department of administration:

(a) The number of hearings on the merits in contested claims for compensation that the appeals officer has conducted in each month during his term of office;

(b) The number of final decisions of the appeals officer for which judicial review is sought pursuant to NRS 616C.370, including notations that identify specifically for each such decision:

(1) The court in which judicial review is sought; and

(2) The action taken by the court in which judicial review is sought, including, without limitation, whether the matter is still pending or whether the court affirmed, modified or reversed the decision of the appeals officer; and

(c) The evaluations pertaining to the appeals officer that have been conducted by the senior appeals officer pursuant to section 7 of this act.

Sec. 15. 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 concerning accident benefits made by an organization for managed care which has contracted with an insurer must, within 14 days of the decision and before requesting a resolution of the dispute pursuant to NRS 616C.345 to 616C.385, inclusive, ***and sections 8 and 9 of this act,*** appeal that decision 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.

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 ~~[.]~~ ***, and sections 8 and 9 of this act.***

Sec. 16. NRS 616C.325 is hereby amended to read as follows:

616C.325 1. It is unlawful for any person to represent an employee before a ~~[~~hearings~~]~~ ***hearing*** officer, or in any negotiations, settlements, hearings or other meetings with an insurer concerning the employee's claim or possible claim, unless he is:

(a) Employed full time by the employee's labor organization;

(b) Admitted to practice law in this state;

(c) Employed full time by and under the supervision of an attorney admitted to practice law in this state; or

(d) Appearing without compensation on behalf of the employee.

It is unlawful for any person who is not admitted to practice law in this state to represent the employee before an appeals officer ~~[.]~~ ***or an appeals panel.***

2. It is unlawful for any person to represent an employer at hearings of contested cases unless that person is:

(a) Employed full time by the employer or a trade association to which the employer belongs that is not formed solely for the purpose of providing representation at hearings of contested cases;

(b) An employer's representative licensed pursuant to subsection 3 who is not licensed as a third-party administrator;

(c) Admitted to practice law in this state; or

(d) A licensed third-party administrator.

3. The director of the department of administration shall adopt regulations which include the:

(a) Requirements for licensure of employers' representatives, including:

(1) The registration of each representative; and

(2) The filing of a copy of each written agreement for the compensation of a representative;

(b) Procedure for such licensure; and

(c) Causes for revocation of such a license, including any applicable action listed in NRS 616D.120 or a violation of this section.

4. Any person who is employed by or contracts with an employer to represent the employer at hearings regarding contested claims is an agent of the employer. If the employer's representative violates any provision of this chapter or chapter 616A, 616B or 616D of NRS, the employer is liable for any penalty assessed because of that violation.

5. An employer shall not make the compensation of any person representing him contingent in any manner upon the outcome of any contested claim.

6. The director of the department of administration shall collect in advance and deposit with the state treasurer for credit to the state general fund the following fees for licensure as an employer's representative:

(a) Application and license $78

(b) Triennial renewal of each license 78

Sec. 17. NRS 616C.340 is hereby amended to read as follows:

616C.340 1. The ~~[~~governor~~]~~ ***director of the department of administration, in his capacity as the chief of the hearings division,*** shall appoint one or more appeals officers to conduct hearings in contested claims for compensation pursuant to NRS 616C.360. Each appeals officer ~~[~~shall hold~~]~~ ***holds*** office for 2 years ~~[~~from~~]~~ ***after*** the date of his appointment and until his successor is appointed and has qualified. Each appeals officer is entitled to receive an annual salary in an amount provided by law and is in the unclassified service of the state.

2. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state for at least 2 years ~~[~~.~~]~~ ***and who has at least 2 years of experience practicing law in actions related to claims for compensation.*** Except as otherwise provided in NRS 7.065, an appeals officer shall not engage in the private practice of law.

3. If an appeals officer determines that he has a personal interest or a conflict of interest, directly or indirectly, in any case which is before him ~~[~~,~~]~~ ***or an appeals panel of which he is a member,*** he shall disqualify himself from hearing the case.

4. The ~~[~~governor~~]~~ ***director of the department of administration, in his capacity as the chief of the hearings division,*** may appoint one or more special appeals officers to conduct hearings in contested claims for compensation pursuant to NRS 616C.360. The ~~[~~governor~~]~~ ***director*** shall not appoint an attorney who represents persons in actions related to claims for compensation to serve as a special appeals officer.

5. A special appeals officer appointed pursuant to subsection 4 is vested with the same powers as a regular appeals officer. A special appeals officer may hear any case in which a regular appeals officer has a conflict, or any case assigned to him by the senior appeals officer to assist with a backlog of cases. A special appeals officer is entitled to be paid at an hourly rate, as determined by the department of administration.

6. ~~[~~The~~]~~ ***Except as otherwise provided in this subsection, the*** decision of an appeals officer is the final and binding administrative determination of a claim for compensation ~~[~~under~~]~~ ***pursuant to*** chapters 616A to 616D, inclusive, or chapter 617 of NRS, and the whole record consists of all evidence taken at the hearing before the appeals officer and any findings of fact and conclusions of law based thereon. ***If an aggrieved party appeals the decision of an appeals officer to an appeals panel pursuant to section 8 of this act, the decision of the appeals panel is the final and binding administrative determination as set forth in subsection 8 of section 9 of this act.***

Sec. 18. NRS 616C.350 is hereby amended to read as follows:

616C.350 1. Any physician or chiropractor who attends an employee within the provisions of chapters 616A to 616D, inclusive, or chapter 617

of NRS in a professional capacity, may be required to testify before an appeals officer ~~[.]~~ ***or an appeals panel.*** A physician or chiropractor who testifies is entitled to receive the same fees as witnesses in civil cases and, if the appeals officer ***or the appeals panel*** so orders at ~~[his]~~ ***its*** own discretion, a fee equal to that authorized for a consultation by the appropriate schedule of fees for physicians or chiropractors. These fees must be paid by the insurer.

2. Information gained by the attending physician or chiropractor while in attendance on the injured employee is not a privileged communication if:

(a) Required by an appeals officer ***or an appeals panel*** for a proper understanding of the case and a determination of the rights involved; or

(b) The information is related to any fraud that has been or is alleged to have been committed in violation of the provisions of this chapter or chapter 616A, 616B or 616D of NRS.

Sec. 19. NRS 616C.355 is hereby amended to read as follows:

616C.355 At any time 10 or more days before a scheduled hearing before an appeals officer, ***an appeals panel,*** the administrator, the manager or the manager's designee, a party shall mail or deliver to the opposing party any affidavit or declaration which he proposes to introduce into evidence and notice to the effect that unless the opposing party, within 7 days after the mailing or delivery of such affidavit or declaration, mails or delivers to the proponent a request to cross-examine the affiant or declarant, his right to cross-examine the affiant or declarant is waived and the affidavit or declaration, if introduced into evidence, will have the same effect as if the affiant or declarant had given sworn testimony before the appeals officer, ***the appeals panel,*** the administrator, the manager or the manager's designee.

Sec. 20. 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, 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.

7. The appeals 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 to an appeals panel.

Sec. 21. NRS 616C.365 is hereby amended to read as follows:

616C.365 1. If an employer or insurer requests a hearing before a hearing officer **,** ~~[or]~~ appeals officer ***or appeals panel*** relating to a claim for compensation, and the hearing results in a decision favorable to the employee, the employee is entitled to receive reimbursement from the insurer for:

(a) His actual expenses necessarily incurred for travel to and from the hearing, if he is required to travel more than 20 miles one way from his residence or place of employment to the hearing; and

(b) Any regular wages lost as a result of his attending the hearing.

2. The division shall adopt regulations governing the procedure and forms to be used for the reimbursement provided by subsection 1.

Sec. 22. NRS 616C.370 is hereby amended to read as follows:

616C.370 1. No judicial proceedings may be instituted for compensation for an injury or death under chapters 616A to 616D, inclusive, of NRS unless:

(a) A claim for compensation is filed as provided in NRS 616C.020; and

(b) A final decision ~~[of an appeals officer has been rendered]~~ on such ***a*** claim ~~[.]~~ ***has been rendered by:***

(1) An appeals officer; or

(2) An appeals panel, if the decision of an appeals officer was appealed to the appeals panel pursuant to section 8 of this act.

2. Judicial proceedings instituted for compensation for an injury or death, under chapters 616A to 616D, inclusive, of NRS are limited to judicial review of the decision of ~~[an]~~ ***:***

(a) An appeals officer ~~[.]~~ ***; or***

(b) An appeals panel, if the decision of an appeals officer was appealed to the appeals panel pursuant to section 8 of this act.

Sec. 23. NRS 616C.375 is hereby amended to read as follows:

616C.375 If an insurer, employer or claimant, or the representative of an insurer, employer or claimant, appeals the decision of an appeals officer ~~[.]~~ ***or an appeals panel,*** that decision is not stayed unless a stay is granted by the appeals officer ***, the appeals panel*** or the district court within 30 days after the date on which the decision was rendered.

Sec. 24. NRS 616C.380 is hereby amended to read as follows:

616C.380 1. If a hearing officer, appeals officer ***, appeals panel*** or district court renders a decision on a claim for compensation and the insurer or employer appeals that decision, but is unable to obtain a stay of the decision:

(a) Payment of that portion of an award for a permanent partial disability which is contested must be made in installment payments until the claim reaches final resolution.

(b) Payment of the award must be made in monthly installments of 66 2/3 percent of the average wage of the claimant until the claim reaches final resolution if the claim is for more than 3 months of past benefits for a temporary total disability or rehabilitation, or for a payment in lump sum related to past benefits for rehabilitation, such as costs for purchasing a business or equipment.

2. If the final resolution of the claim is in favor of the claimant, the remaining amount of compensation to which the claimant is entitled may be paid in a lump sum if the claimant is otherwise eligible for such a payment pursuant to NRS 616C.495 and any regulations adopted pursuant thereto. If the final resolution of the claim is in favor of the insurer or employer, any amount paid to the claimant in excess of the uncontested amount must be deducted from any future benefits related to that claim, other than medical benefits, to which the claimant is entitled. The deductions must be made in a reasonable manner so as not to create an undue hardship to the claimant.

Sec. 25. NRS 616C.385 is hereby amended to read as follows:

616C.385 If a party petitions the district court for judicial review of a final decision of an appeals officer, ***an appeals panel,*** the manager or the manager's designee, and the petition is found by the district court to be frivolous or brought without reasonable grounds, the district court may order costs and a reasonable attorney's fee to be paid by the petitioner.

Sec. 26. NRS 616C.585 is hereby amended to read as follows:

616C.585 1. Except as otherwise provided in subsection 2, vocational rehabilitation services ordered by an insurer, a hearing officer ***,*** ~~[or]~~ an appeals officer ***or an appeals panel*** must not include the following goods and services:

(a) A motor vehicle.

(b) Repairs to an injured employee's motor vehicle.

(c) Tools and equipment normally provided to the injured employee by his employer during the course of his employment.

(d) Care for the injured employee's children.

2. An injured employee is entitled to receive the goods and services set forth in subsection 1 only if his insurer determines that such goods and services are reasonably necessary.

3. Vocational rehabilitation services ordered by an insurer may include the formal education of the injured employee only if:

(a) The priorities set forth in NRS 616C.530 for returning an injured employee to work are followed;

(b) The education is recommended by a plan for a program of vocational rehabilitation developed pursuant to NRS 616C.555; and

(c) A written proposal concerning the probable economic benefits to the employee and the necessity of the education is submitted to the insurer.

Sec. 27. NRS 616C.600 is hereby amended to read as follows:

616C.600 1. A hearing officer ~~[or]~~ ***, an*** appeals officer ***or an appeals panel*** shall not order self-employment for an injured employee or the payment of compensation in a lump sum for vocational rehabilitation.

2. An insurer, an employer and an injured employee may execute an agreement concerning self-employment.

Sec. 28. NRS 616D.050 is hereby amended to read as follows:

616D.050 1. Appeals officers, ***appeals panels,*** the administrator, the manager and the manager's designee, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents.

(b) Administer oaths.

(c) Certify to official acts.

(d) Call and examine under oath any witness or party to a claim.

(e) Maintain order.

(f) Rule upon all questions arising during the course of a hearing or proceeding.

(g) Permit discovery by deposition or interrogatories.

(h) Initiate and hold conferences for the settlement or simplification of issues.

(i) Dispose of procedural requests or similar matters.

(j) Generally regulate and guide the course of a pending hearing or proceeding.

2. Hearing officers, in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters, may:

(a) Issue subpoenas requiring the attendance of any witness or the production of books, accounts, papers, records and documents that are relevant to the dispute for which the hearing or other proceeding is being held.

(b) Maintain order.

(c) Permit discovery by deposition or interrogatories.

(d) Initiate and hold conferences for the settlement or simplification of issues.

(e) Dispose of procedural requests or similar matters.

(f) Generally regulate and guide the course of a pending hearing or proceeding.

Sec. 29. NRS 616D.065 is hereby amended to read as follows:

616D.065 1. An appeals officer ~~[,]~~ ***or an appeals panel,*** in conducting hearings or other proceedings pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS or regulations adopted pursuant to those chapters, may order the attorney or representative of a party to pay any costs that are incurred by the hearings division of the department of administration for a court reporter or an interpreter.

2. Before ordering the payment of such costs, the appeals officer ***or the appeals panel*** must find that the costs were incurred because the attorney or representative of a party caused a continuance or delay in a scheduled hearing by his failure, without good cause, to comply with an order of the appeals officer ***, the appeals panel*** or a regulation adopted pursuant to chapters 616A to 616D, inclusive, of NRS.

Sec. 30. NRS 616D.070 is hereby amended to read as follows:

616D.070 If any person:

1. Disobeys an order of an appeals officer, ***an appeals panel,*** a hearing officer, the administrator, the manager or the manager's designee, or a subpoena issued by the manager, manager's designee, administrator, appeals officer, ***appeals panel,*** hearing officer, inspector or examiner;

2. Refuses to permit an inspection; or

3. As a witness, refuses to testify to any matter for which he may be lawfully interrogated,

the district judge of the county in which the person resides, on application of the appeals officer, ***the appeals panel,*** the hearing officer, the administrator, the manager or the manager's designee, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from the court on a refusal to testify therein.

Sec. 31. NRS 616D.080 is hereby amended to read as follows:

616D.080 1. Each officer who serves a subpoena is entitled to receive the same fees as a sheriff.

2. Each witness who appears, in obedience to a subpoena which has been issued pursuant to this chapter or chapter 616A, 616B or 616C of NRS, before an appeals officer, ***an appeals panel,*** a hearing officer, the administrator, the manager or the manager's designee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record.

3. The appeals officer, ***appeals panel,*** hearing officer, administrator, manager or manager's designee shall:

(a) Authorize payment from his administrative budget of the fees and mileage due to such a witness; or

(b) Impose those costs upon the party at whose instance the witness was subpoenaed or, for good cause shown, upon any other party.

Sec. 32. NRS 616D.100 is hereby amended to read as follows:

616D.100 1. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any final hearing or investigation, made by a stenographer appointed by an appeals officer, ***an appeals panel,*** a hearing officer, the administrator, the manager or the manager's designee, being certified by that stenographer to be a true and correct transcript of the testimony in the final hearing or investigation, or of a particular witness, or of a specific part thereof, and carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on the final hearing or investigation so purporting to be taken and transcribed, may be received in evidence with the same effect as if the stenographer had been present and testified to the facts so certified.

2. A copy of the transcript must be furnished on demand to any party upon the payment of the fee required for transcripts in courts of record.

Sec. 33. NRS 616D.120 is hereby amended to read as follows:

616D.120 1. Except as otherwise provided in this section, if the administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has:

(a) Through fraud, coercion, duress or undue influence:

(1) Induced a claimant to fail to report an accidental injury or occupational disease;

(2) Persuaded a claimant to settle for an amount which is less than reasonable;

(3) Persuaded a claimant to settle for an amount which is less than reasonable while a hearing or an appeal is pending; or

(4) Persuaded a claimant to accept less than the compensation found to be due him by a hearing officer, appeals officer, ***appeals panel,*** court of

competent jurisdiction, written settlement agreement, written stipulation or the division when carrying out its duties pursuant to chapters 616A to 617, inclusive, of NRS;

(b) Refused to pay or unreasonably delayed payment to a claimant of compensation found to be due him by a hearing officer, appeals officer, ***appeals panel,*** court of competent jurisdiction, written settlement agreement, written stipulation or the division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:

(1) Later than 10 days after the date of the settlement agreement or stipulation;

(2) Later than 30 days after the date of the decision of a court, hearing officer, appeals officer **,** ***appeals panel*** or division, unless a stay has been granted; or

(3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer **,** ***appeals panel*** or division has been lifted;

(c) Refused to process a claim for compensation pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(d) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS for compensation found to be due him by a hearing officer, appeals officer, ***appeals panel,*** court of competent jurisdiction, written settlement agreement, written stipulation or the division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(e) Failed to comply with the division's regulations covering the payment of an assessment relating to the funding of costs of administration of chapters 616A to 617, inclusive, of NRS;

(f) Failed to provide or unreasonably delayed payment to an injured employee or reimbursement to an insurer pursuant to NRS 616C.165; or

(g) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,

the administrator shall impose an administrative fine of $1,000 for each initial violation, or a fine of $10,000 for a second or subsequent violation.

2. Except as otherwise provided in chapters 616A to 616D, inclusive, or chapter 617 of NRS, if the administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has failed to comply with any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto, the administrator may take any of the following actions:

(a) Issue a notice of correction for:

(1) A minor violation, as defined by regulations adopted by the division; or

(2) A violation involving the payment of compensation in an amount which is greater than that required by any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto.

The notice of correction must set forth with particularity the violation committed and the manner in which the violation may be corrected. ~~[Nothing in this section authorizes]~~ ***The provisions in this section do not authorize*** the administrator to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer ***, appeals panel*** or court of competent jurisdiction or a provision contained in a written settlement agreement or written stipulation.

(b) Impose an administrative fine for:

(1) A second or subsequent violation for which a notice of correction has been issued pursuant to paragraph (a); or

(2) Any other violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto, for which a notice of correction may not be issued pursuant to paragraph (a).

The fine imposed may not be greater than $250 for an initial violation, or more than $1,000 for any second or subsequent violation.

(c) Order a plan of corrective action to be submitted to the administrator within 30 days after the date of the order.

3. If the administrator determines that a violation of any of the provisions of paragraphs (a) to (d), inclusive, of subsection 1 has occurred, the administrator shall order the insurer, organization for managed care, health care provider, third-party administrator or employer to pay to the claimant a benefit penalty in an amount equal to 50 percent of the compensation due or $10,000, whichever is less. In no event may a benefit penalty be less than $500. The benefit penalty is for the benefit of the claimant and must be paid directly to him within 10 days after the date of the administrator's determination. Proof of the payment of the benefit penalty must be submitted to the administrator within 10 days after the date of his determination unless an appeal is filed pursuant to NRS 616D.140. Any compensation to which the claimant may otherwise be entitled pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS must not be reduced by the amount of any benefit penalty received pursuant to this subsection.

4. In addition to any fine or benefit penalty imposed pursuant to this section, the administrator may assess against an insurer who violates any regulation concerning the reporting of claims expenditures used to calculate an assessment an administrative penalty of up to twice the amount of any underpaid assessment.

5. If:

(a) The administrator determines that a person has violated any of the provisions of NRS 616D.200, 616D.220, 616D.240, 616D.300, 616D.310 or 616D.350 to 616D.440, inclusive; and

(b) The fraud control unit for industrial insurance established pursuant to NRS 228.420 notifies the administrator that the unit will not prosecute the person for that violation,

the administrator shall impose an administrative fine of not more than $10,000.

6. Two or more fines of $1,000 or more imposed in 1 year for acts enumerated in subsection 1 must be considered by the commissioner as evidence for the withdrawal of:

(a) A certificate to act as a self-insured employer.

(b) A certificate to act as an association of self-insured public or private employers.

(c) A certificate of registration as a third-party administrator.

7. The commissioner may, without complying with the provisions of NRS 616B.327 or 616B.431, withdraw the certification of a self-insured employer, association of self-insured public or private employers or third-party administrator if, after a hearing, it is shown that the self-insured employer, association of self-insured public or private employers or third-party administrator violated any provision of subsection 1.

Sec. 34. NRS 617.370 is hereby amended to read as follows:

617.370 1. Any employee who is entitled to receive compensation under this chapter shall, if:

(a) Requested by the insurer; or

(b) Ordered by an appeals officer, ***an appeals panel*** or a hearing officer,

submit himself for medical examination at a time and from time to time at a place reasonably convenient for the employee, and as may be provided by the regulations of the division.

2. If the insurer has reasonable cause to believe that an injured employee who is receiving compensation for a permanent total disability is no longer disabled, the insurer may request the employee to submit to an annual medical examination to determine whether the disability still exists. The insurer shall pay the costs of the examination.

3. The request or order for an examination must fix a time and place therefor, ***with*** due regard ~~[being had to]~~ ***for*** the nature of the medical examination, the convenience of the employee, his physical condition and ability to attend at the time and place fixed.

4. The employee is entitled to have a physician, provided and paid for by him, present at any such examination.

5. If the employee refuses to submit to an examination ordered or requested pursuant to subsection 1 or 2 or obstructs the examination, his right to compensation is suspended until the examination has taken place, and no compensation is payable during or for the period of suspension.

6. Any physician who makes or is present at any such examination may be required to testify as to the result thereof.

Sec. 35. NRS 617.402 is hereby amended to read as follows:

617.402 1. If an insurer determines that an employee has knowingly misrepresented or concealed a material fact to obtain any benefit or payment under the provisions of this chapter, the insurer may deduct from any benefits or payments due to the employee, the amount obtained by the employee because of the misrepresentation or concealment of a material fact. The employee shall reimburse the insurer for all benefits or payments received because of the knowing misrepresentation or concealment of a material fact.

2. An employee who is aggrieved by a determination of an insurer made pursuant to subsection 1 may appeal that determination pursuant to NRS 616C.315 to 616C.385, inclusive ~~[.]~~ ***, and sections 6 to 9, inclusive, of this act.*** If the final decision by an appeals officer ***or an appeals panel*** is favorable to the employee, the administrator shall order the insurer to pay $2,000 to that employee, in addition to any benefits or payments the employee is entitled to receive, if:

(a) The final decision is favorable to the employee; and

(b) The administrator determines that the insurer had no reasonable basis for believing that the employee knowingly misrepresented or concealed a material fact to obtain any benefit or payment.

3. This section does not preclude an insurer from making an investigation pursuant to, or pursuing the remedies provided by, NRS 616D.300.

Sec. 36. NRS 617.405 is hereby amended to read as follows:

617.405 1. No judicial proceedings may be instituted for benefits for an occupational disease under this chapter, unless:

(a) A claim is filed within the time limits prescribed in NRS 617.344; and

(b) A final decision by an appeals officer ***or an appeals panel*** has been rendered on the claim.

2. Judicial proceedings instituted for benefits for an occupational disease under this chapter are limited to judicial review of that decision.

Sec. 37. Chapter 232 of NRS is hereby amended by adding thereto a new section to read as follows:

The director, in his capacity as the chief of the hearings division, shall adopt regulations governing the conduct of the hearing and appeals officers. The regulations must include:

1. And be no less stringent than, the standards set forth in the Nevada code of judicial conduct adopted by the supreme court.

2. A procedure for a person who believes that a hearing or appeals officer has violated the standards for conduct to make a complaint to the director.

3. Rules of practice pursuant to which the director will hear complaints made pursuant to subsection 2.

4. The penalties that may be imposed against a hearing or appeals officer if the director determines, pursuant to the rules of practice adopted pursuant to subsection 3, that a hearing or appeals officer has violated a standard for conduct.

Sec. 38. NRS 232.212 is hereby amended to read as follows:

232.212 As used in NRS 232.212 to 232.2195, inclusive, ***and section 37 of this act,*** unless the context requires otherwise:

1. "Department" means the department of administration.
2. "Director" means the director of the department.

Sec. 39. NRS 232.215 is hereby amended to read as follows:

232.215 The director:

1. Shall appoint a chief of the:
(a) Risk management division;
(b) Buildings and grounds division;
(c) Purchasing division;
(d) State printing division;
(e) Administrative services division; and
(f) Motor pool division if separately established.
2. Shall appoint a chief of the budget division, or may serve in this position if he has the qualifications required by NRS 353.175.
3. Shall serve as chief of the hearings division and ~~[shall]~~ appoint the hearing officers ***, appeals officers*** and compensation officers. The director may designate one of the appeals officers in the division ~~[to]~~ ***as the senior appeals officer. The senior appeals officer shall*** supervise the administrative, technical and procedural activities of the division. ***The senior appeals officer shall perform such additional duties as the director, serving as chief of the hearings division, may require.***
4. Shall serve as chairman of the state public works board.
5. Is responsible for the administration, through the divisions of the department, of the provisions of chapters 331, 333, 336 and 344 of NRS, NRS 353.150 to 353.246, inclusive, and all other provisions of law relating to the functions of the divisions of the department.
6. Is responsible for the administration of the laws of this state relating to the negotiation and procurement of medical services and other benefits for state agencies.
7. Has such other powers and duties as are provided by law.

Sec. 40. 1. This section and sections 1, 2, 3, 5 to 9, inclusive, 12 to 17, inclusive, 19 to 25, inclusive, and 27 to 39, inclusive, of this act become effective on July 1, 1999.

2. Sections 4, 10, 11, 18 and 26 of this act become effective at 12:01 a.m. on July 1, 1999.

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