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Summary of Assembly Bill No. 168

Assembly Bill 168 proposes changes to several sections of the Nevada Statutes. The following is a brief synopsis of the proposed modifications:

1. Requires an insurer who provides industrial insurance in certain counties to ensure the availability of certain services for injured employees within those counties (section 2 of Chapter 616B of NRS).
2. Revises the reimbursements for certain health care providers (section 3 of Chapter 616B.527 of NRS).
3. Allows an injured employee to choose their physician under certain circumstances (section 4 of Chapter 616C of NRS).
4. Requires the adoption of the latest American Medical Association (AMA) "Guides to the Evaluation of Permanent Impairment" in determining disability rating for certain injuries and occupational diseases (section 7 of Chapter 616.110 of NRS).
5. Modifies the criteria for penalties against an insurer (Section 14 of Chapter 616D.120 of NRS).
6. Requires the use of vocational rehabilitation services when employee is offered temporary or light-duty work (Section 11 of Chapter 616C.475 of NRS).
7. Increases compensation payable to an injured worker if their employer or an agent of their employer removes certain safeguards or protections under certain circumstances (Section 17 of Chapter 616D.140 of NRS).

Actuarial Analysis of Assembly Bill No. 168

1. Ensuring the Availability of Services to Injured Employees

This amendment states that an insurer who provides industrial insurance in a county whose population is 10,000 or more shall ensure that the services of at least one general practitioner, one orthopedist, one neurologist, one internist and one chiropractor are available for injured employees for each group of 10,000 natural persons residing within that county. **This requirement may be extremely difficult to adhere to in both small and large counties.** For example, based on their 2002 Annual Performance Report, Clark County is estimated to have a population of 1,578,332, which would require insurers to make health care services available to the claimant for at least 157 general practitioners, 157 orthopedists, 157 neurologists, 157 internists, and 157 chiropractors. Further, the insurer would need to seek out and contract with this number of physicians if they desire to use a managed care system. In fact, this amendment, along with #3 below, **may result in the elimination of the use of managed care networks for worker compensation in some counties of Nevada.** Hence, this amendment could have a significant financial impact. For counties that have the appropriate number of physicians available, costs will likely climb there too as insurance providers will have to enter into contracts with

individuals and organizations that may seek higher compensation for their medical services. **Therefore, medical and indemnity costs would be expected to increase substantially in most, if not all, counties of Nevada. In addition, the requirement to ensure the availability of medical practitioners per 10,000 people may be impossible to comply with given the free market decisions by individual practitioners as to where they choose to practice.**

2. Revision of Discounts for Medical Services

This amendment limits the discounts provided to insurers for health care services to an injured employee to no more than 10 percent of the medical fee schedule. Some insurers are likely receiving discounts greater than 10% from health care providers currently due to the volume of business they can promise. If enacted, this new addition to the law will increase the cost of medical services for those insurers. For instance, **if an insurer has negotiated an average discount of 20% off of the medical fee schedule, then this change could increase their physician costs by 12.5% (90% / 80%).**

3. Authorization of an Injured Employee to Select his or her Physician

This amendment states that an injured employee may choose any physician or chiropractor in the state as his or her treating physician or chiropractor for his or her injury. This is true even when an insurer utilizes a managed care network. In this instance, the insurer shall, *if* the physician or chiropractor accepts the terms of the contract, reimburse the provider for any services procured pursuant to the contract. It's important to note that the "if" allows the treating physician to determine how compensation will be administered. As the insurer will no longer be able to guarantee a certain number of covered employees to participating health care providers, the physician may be less likely to accept the negotiated fee. In addition, this amendment may allow employees to select physicians and/or chiropractors that may be known to utilize more expensive and/or frequent procedures. This increase in frequency of medical service would be expected to magnify the financial impact of the above amendments. Based on a new Workers Compensation Research Institute (WCRI) report, *"Provider Choice Laws, Network Involvement, and Medical Costs"*, **a change from employer to employee control of medical service provider could increase workers compensation costs approximately 7% to 10%.**

4. Adoption of the Latest AMA Guides

Assembly Bill 168 proposes that the latest edition of the *AMA Guides to the Evaluation of Permanent Impairment* be used in the determination of the percentage of disability or bodily loss ratings not later than one year after the publication of that edition. This would replace the currently required fourth edition with the fifth edition. The most notable change incorporated into the fifth edition of the *AMA Guides* is the inclusion of a "qualitative

method for evaluating impairment due to chronic pain." Impairment ratings under the Guides may now be based on both objective and subjective (pain) criteria. When it is determined that an employee's impairment (pain) is not adequately reflected by the impairment percentage, the physician can increase the rating by up to three percentage points. It is expected that this will likely lead to an increase in permanent partial impairment ratings. **The conversion to the 5th edition could increase overall workers compensation system costs between 1% and 3% (\$4.7M to \$14.0M).** Note that this change in statutory language seems to suggest the need for a change in the regulations to actually switch to the fifth and subsequent editions.

5. Modifies the Criteria for Penalties Against an Insurer

This amendment modifies the language describing punishable acts of an insurer, managed care organization, third-party administrator, or employer. The most substantial change is the removal of the requirement of fraud, coercion, duress or undue influence in persuading a claimant to settle at an amount that may later be deemed less than "reasonable." This modification may cause some insurers to offer richer settlements, especially if they've received a prior violation (1st is a \$1,000 fine and 2nd and subsequent violations are \$10,000 fines).

6. Requires the use of Vocational Rehabilitation Services when Employee is Offered Temporary or Light-Duty Work

This proposed amendment removes the employers right to disallow vocational rehabilitation when an offer of temporary, light-duty employment is made to the employee. Whether or not the claimant accepts the offer, TTD benefits would cease to be paid. The claimant would still be eligible, though, for training and job placement services along with compensation (maintenance) while they are participating in the program. Additionally, new criteria specifying that an offer of temporary or light-duty must be in a position with the same seniority and benefits of the employee's pre-injury job has been added. This restriction on an offer of temporary or light-duty employment could potentially increase costs by reducing the opportunities for employees to return to gainful employment and, therefore, continuing to collect workers compensation benefits. **This proposed change could increase overall system costs to the extent employees with work restrictions utilize vocational rehabilitation services and less employment offers are made due to the stricter criteria.** As an aside, California is a state which previously mandated the availability of vocational rehabilitation and over time the share of total workers compensation costs in California associated with vocational rehabilitation grew to 10% or more of overall system costs. California has subsequently modified its statute to no longer mandate such services.

7. Increasing Compensation Payable Due To The Removal Of Safeguard Or Protections By The Employer

This amendment states that if the employer or agent of the employer removed the safeguard or protection, or if the employer consented to its removal the compensation to the injured worker must be increased by 25%. In addition, if before the injury, the injured worker or his agent submitted a request to the employer to install or replace the safeguard or protection, and after receiving the request, failed to comply with the request, the compensation of the injured worker must be also increased by 25%. This new addition to the law could also increase overall system costs for other claims due to possible changes in the level of litigation. For example, an employee may argue that he/she requested that the employer install or replace a safeguard or protection, and consequently he/she was injured. Since the term "written" is not present, an employee's assertion that an "oral" submission of request was made may be debated in court.