

SENATE BILL NO. 121—SENATORS HECK, TOWNSEND,
CARLTON, HARDY AND LEE

FEBRUARY 23, 2005

JOINT SPONSORS: ASSEMBLYMEN OCEGUERA, BUCKLEY,
GERHARDT, HARDY, MUNFORD AND PIERCE

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing payment of certain
workers' compensation claims. (BDR 53-1021)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to industrial insurance; requiring an insurer,
organization for managed care, third-party administrator
or employer who improperly denies payment for certain
treatment or other services for an injured employee to
reimburse the injured employee directly under certain
circumstances; requiring the direct reimbursement of
certain health insurers and casualty insurers that pay for
such treatment or other services on behalf of the injured
employee; providing administrative penalties; and
providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, an injured employee has a right to an administrative appeal
2 when an entity administering a workers' compensation claim denies payment for
3 certain treatment or other services provided to the injured employee by a health
4 care provider. (NRS 616C.137, 616C.305, 616C.315-616C.385) The injured
5 employee also has a right to pay in protest for the treatment or other services
6 pending the appeal. (NRS 616C.138) If the entity administering the workers'
7 compensation claim is found to be responsible for the payment or otherwise accepts
8 responsibility for the payment, the entity must pay the health care provider for the
9 costs of the treatment or other services, and the health care provider must reimburse
10 the injured employee for the amount paid in protest. (NRS 616C.138)



11 This bill provides that the entity administering the workers' compensation
12 claim is required to reimburse the injured employee directly or reimburse certain
13 health insurers and casualty insurers that paid for the treatment or other services on
14 behalf of the injured employee. This bill also allows the injured employee or
15 insurer to recover from the health care provider any amount that it paid in excess
16 over the amount that the health care provider was entitled to receive for the
17 treatment or other services under the workers' compensation laws.

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

1 **Section 1.** NRS 616C.135 is hereby amended to read as
2 follows:

3 616C.135 1. A provider of health care who accepts a patient
4 as a referral for the treatment of an industrial injury or an
5 occupational disease may not charge the patient for any treatment
6 related to the industrial injury or occupational disease, but must
7 charge the insurer. The provider of health care may charge the
8 patient for any services that are not related to the employee's
9 industrial injury or occupational disease.

10 2. The insurer is liable for the charges for approved services
11 related to the industrial injury or occupational disease if the charges
12 do not exceed:

13 (a) The fees established in accordance with NRS 616C.260 or
14 the usual fee charged by that person or institution, whichever is less;
15 and

16 (b) The charges provided for by the contract between the
17 provider of health care and the insurer or the contract between the
18 provider of health care and the organization for managed care.

19 3. A provider of health care may accept payment from an
20 injured employee who is paying in protest *or from a health or*
21 *casualty insurer paying on behalf of the injured employee* pursuant
22 to NRS 616C.138 for treatment or other services that the injured
23 employee alleges are related to the industrial injury or occupational
24 disease.

25 4. If a provider of health care, an organization for managed
26 care, an insurer or an employer violates the provisions of this
27 section, the Administrator shall impose an administrative fine of not
28 more than \$250 for each violation.

29 **Sec. 2.** NRS 616C.138 is hereby amended to read as follows:

30 616C.138 1. If:

31 ~~H-~~ (a) An insurer, an organization for managed care, a third-
32 party administrator or an employer who provides accident benefits
33 for injured employees pursuant to NRS 616C.265 denies
34 authorization or responsibility for payment for treatment or other



1 services provided by a provider of health care that the injured
2 employee alleges are related to an industrial injury or occupational
3 disease;

4 ~~[2-]~~ (b) The injured employee pays in protest for the treatment
5 or other services ~~[; and~~

6 ~~—3-]~~ *or a health or casualty insurer pays for the treatment or*
7 *other services on behalf of the injured employee; and*

8 (c) A hearing officer or appeals officer ultimately determines
9 that the treatment or other services should have been covered, or the
10 insurer, organization for managed care, third-party administrator or
11 employer who provides accident benefits subsequently accepts
12 responsibility for payment,

13 ➤ the hearing officer or appeals officer shall order the insurer,
14 organization for managed care, third-party administrator or
15 employer who provides accident benefits to pay to the ~~[provider of~~
16 ~~health care]~~ *injured employee or the health or casualty insurer* the
17 amount which *the injured employee or the health or casualty*
18 *insurer paid that* is allowed for the treatment or other services set
19 forth in the schedule of fees and charges established pursuant to
20 NRS 616C.260 or, if the insurer has contracted with an organization
21 for managed care or with providers of health care pursuant to NRS
22 616B.527, the amount that is allowed for the treatment or other
23 services under that contract.

24 2. *If the injured employee or the health or casualty insurer*
25 *paid the provider of health care any amount in excess of the*
26 *amount that the provider would have been entitled to be paid*
27 *pursuant to subsection 1, the injured employee or the health or*
28 *casualty insurer is entitled to recover the excess amount from the*
29 *provider.* Within 30 days after receiving ~~[the payment,]~~ *notice of*
30 *such an excess amount,* the provider of health care shall reimburse
31 the injured employee *or the health or casualty insurer* for the
32 *excess amount.* ~~[paid in protest by him.]~~

33 3. *As used in this section:*

34 (a) *“Casualty insurer” means an insurer or other organization*
35 *providing coverage or benefits under a policy or contract of*
36 *casualty insurance in the manner described in subsection 2 of*
37 *NRS 681A.020.*

38 (b) *“Health insurer” means an insurer or other organization*
39 *providing health coverage or benefits in accordance with state or*
40 *federal law.*

41 **Sec. 3.** NRS 616C.330 is hereby amended to read as follows:

42 616C.330 1. The hearing officer shall:

43 (a) Except as otherwise provided in subsection 2 of NRS
44 616C.315, within 5 days after receiving a request for a hearing, set



1 the hearing for a date and time within 30 days after his receipt of the
2 request at a place in Carson City, Nevada, or Las Vegas, Nevada, or
3 upon agreement of one or more of the parties to pay all additional
4 costs directly related to an alternative location, at any other place of
5 convenience to the parties, at the discretion of the hearing officer;

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

9 (c) Conduct hearings expeditiously and informally.

10 2. The notice must include a statement that the injured
11 employee may be represented by a private attorney or seek
12 assistance and advice from the Nevada Attorney for Injured
13 Workers.

14 3. If necessary to resolve a medical question concerning an
15 injured employee's condition or to determine the necessity of
16 treatment for which authorization for payment has been denied, the
17 hearing officer may refer the employee to a physician or
18 chiropractor of his choice who has demonstrated special competence
19 to treat the particular medical condition of the employee. If the
20 medical question concerns the rating of a permanent disability, the
21 hearing officer may refer the employee to a rating physician or
22 chiropractor. The rating physician or chiropractor must be selected
23 in rotation from the list of qualified physicians and chiropractors
24 maintained by the Administrator pursuant to subsection 2 of NRS
25 616C.490, unless the insurer and injured employee otherwise agree
26 to a rating physician or chiropractor. The insurer shall pay the costs
27 of any medical examination requested by the hearing officer.

28 4. If an injured employee has requested payment for the cost of
29 obtaining a second determination of his percentage of disability
30 pursuant to NRS 616C.100, the hearing officer shall decide whether
31 the determination of the higher percentage of disability made
32 pursuant to NRS 616C.100 is appropriate and, if so, may order the
33 insurer to pay to the employee an amount equal to the maximum
34 allowable fee established by the Administrator pursuant to NRS
35 616C.260 for the type of service performed, or the usual fee of that
36 physician or chiropractor for such service, whichever is less.

37 5. The hearing officer shall order an insurer, organization for
38 managed care or employer who provides accident benefits for
39 injured employees pursuant to NRS 616C.265 to pay *to the*
40 *appropriate person* the charges of a provider of health care if the
41 conditions of NRS 616C.138 are satisfied.

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

44 7. The hearing officer shall render his decision within 15 days
45 after:



- 1 (a) The hearing; or
2 (b) He receives a copy of the report from the medical
3 examination he requested.

4 8. The hearing officer shall render his decision in the most
5 efficient format developed by the Chief of the Hearings Division of
6 the Department of Administration.

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

10 10. Except as otherwise provided in NRS 616C.380, the
11 decision of the hearing officer is not stayed if an appeal from that
12 decision is taken unless an application for a stay is submitted by a
13 party. If such an application is submitted, the decision is
14 automatically stayed until a determination is made on the
15 application. A determination on the application must be made within
16 30 days after the filing of the application. If, after reviewing the
17 application, a stay is not granted by the hearing officer or an appeals
18 officer, the decision must be complied with within 10 days after the
19 refusal to grant a stay.

20 **Sec. 4.** NRS 616C.360 is hereby amended to read as follows:

21 616C.360 1. A stenographic or electronic record must be kept
22 of the hearing before the appeals officer and the rules of evidence
23 applicable to contested cases under chapter 233B of NRS apply to
24 the hearing.

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

27 3. If there is a medical question or dispute concerning an
28 injured employee's condition or concerning the necessity of
29 treatment for which authorization for payment has been denied, the
30 appeals officer may:

31 (a) Refer the employee to a physician or chiropractor of his
32 choice who has demonstrated special competence to treat the
33 particular medical condition of the employee. If the medical
34 question concerns the rating of a permanent disability, the appeals
35 officer may refer the employee to a rating physician or chiropractor.
36 The rating physician or chiropractor must be selected in rotation
37 from the list of qualified physicians or chiropractors maintained by
38 the Administrator pursuant to subsection 2 of NRS 616C.490, unless
39 the insurer and the injured employee otherwise agree to a rating
40 physician or chiropractor. The insurer shall pay the costs of any
41 examination requested by the appeals officer.

42 (b) If the medical question or dispute is relevant to an issue
43 involved in the matter before the appeals officer and all parties agree
44 to the submission of the matter to an external review organization,
45 submit the matter to an external review organization in accordance



1 with NRS 616C.363 and any regulations adopted by the
2 Commissioner.

3 4. If an injured employee has requested payment for the cost of
4 obtaining a second determination of his percentage of disability
5 pursuant to NRS 616C.100, the appeals officer shall decide whether
6 the determination of the higher percentage of disability made
7 pursuant to NRS 616C.100 is appropriate and, if so, may order the
8 insurer to pay to the employee an amount equal to the maximum
9 allowable fee established by the Administrator pursuant to NRS
10 616C.260 for the type of service performed, or the usual fee of that
11 physician or chiropractor for such service, whichever is less.

12 5. The appeals officer shall order an insurer, organization for
13 managed care or employer who provides accident benefits for
14 injured employees pursuant to NRS 616C.265 to pay *to the*
15 *appropriate person* the charges of a provider of health care if the
16 conditions of NRS 616C.138 are satisfied.

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

22 7. The appeals officer shall render his decision:

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

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

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



