
SENATE BILL NO. 225—SENATOR CARLTON

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Making various changes relating to industrial insurance. (BDR 53-975)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: 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; authorizing an injured employee to select a physician or chiropractor to perform an independent evaluation under certain circumstances; requiring the insurer of the injured employee to consider the report of the independent evaluation; requiring a provider of vocational rehabilitation services to register with the Division of Industrial Relations of the Department of Business and Industry; requiring the Administrator of the Division to maintain and distribute to certain persons a list of persons registered to provide vocational rehabilitation services; requiring an insurer to provide a copy of the list to certain employees and allow the employee to chose a provider from the list; authorizing the Administrator of the Division to charge and collect a fee for registering a person as a provider of vocational rehabilitation services; requiring a vocational rehabilitation counselor to act in the best interests of the employee; requiring a provider of vocational rehabilitation services to employ certain vocational rehabilitation counselors; requiring certain assessments be completed by a certified vocational rehabilitation counselor; 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 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. 1. *If an injured employee receives treatment from at least two physicians or chiropractors from one or more organizations for managed care and the insurer determines that the injured employee is not entitled to:*

(a) Continued medical treatment;

(b) Compensation for a temporary total disability; or

(c) Vocational rehabilitation benefits,

↪ the injured employee may select a physician or chiropractor from the panel established pursuant to NRS 616C.090 to perform an independent evaluation.

2. *An independent evaluation performed pursuant to subsection 1 must include:*

(a) A physical examination of the injured employee conducted by the physician or chiropractor performing the independent evaluation; and

(b) A review by the physician or chiropractor of any X rays or medical reports relating to the injured employee that have been submitted to the insurer.

3. *As soon as practicable after completing the independent evaluation, the physician or chiropractor performing the independent evaluation shall submit a report of his evaluation of the injured employee to the insurer.*

4. *Upon receipt of a report pursuant to subsection 3, the insurer shall make a new determination regarding the entitlement of the injured employee to continued medical treatment, compensation for a temporary total disability or vocational rehabilitation benefits. In making the new determination, the insurer shall consider the report submitted by the physician or chiropractor who performed the independent evaluation.*

Sec. 3. 1. *A person shall not provide vocational rehabilitation services to an injured employee unless the person registers with the Division. To register, the person must submit in his application any information required by the Administrator and the fee required pursuant to subsection 4, if any.*

2. *The Administrator shall maintain a list that includes the name of each person who is registered to provide vocational rehabilitation services. The Administrator shall provide a copy of the list to each insurer.*

3. *If an insurer determines that an employee is eligible for vocational rehabilitation services, the insurer shall provide to the*



1 *employee a copy of the list maintained pursuant to subsection 2*
2 *and allow the employee to chose a provider of vocational*
3 *rehabilitation services from the list. The insurer shall obtain a*
4 *statement signed by the employee which states that the insurer*
5 *provided a copy of the list to the employee.*

6 *4. The Administrator may charge and collect a fee for*
7 *registering a person as a provider of vocational rehabilitation*
8 *services. The amount of the fee must not exceed the cost of*
9 *maintaining and providing the list as provided in subsection 2.*

10 *Sec. 4. A vocational rehabilitation counselor shall act in the*
11 *best interests of the employee, regardless of whether the insurer*
12 *has any conflicting interest.*

13 **Sec. 5.** NRS 616C.315 is hereby amended to read as follows:

14 616C.315 1. Any person who is subject to the jurisdiction of
15 the hearing officers pursuant to chapters 616A to 616D, inclusive, or
16 chapter 617 of NRS may request a hearing before a hearing officer
17 of any matter within the hearing officer's authority. The insurer
18 shall provide, without cost, the forms necessary to request a hearing
19 to any person who requests them.

20 2. A hearing must not be scheduled until the following
21 information is provided to the hearing officer:

22 (a) The name of:

23 (1) The claimant;

24 (2) The employer; and

25 (3) The insurer or third-party administrator;

26 (b) The number of the claim; and

27 (c) If applicable, a copy of the letter of determination being
28 appealed or, if such a copy is unavailable, the date of the
29 determination and the issues stated in the determination.

30 3. Except as otherwise provided in NRS 616B.772, 616B.775,
31 616B.787 and 616C.305, a person who is aggrieved by:

32 (a) A written determination of an insurer; or

33 (b) The failure of an insurer to respond within 30 days to a
34 written request mailed to the insurer by the person who is aggrieved,
35 ➡ may appeal from the determination or failure to respond by filing
36 a request for a hearing before a hearing officer. Such a request must
37 include the information required pursuant to subsection 2 and must
38 be filed within 70 days after the date on which the notice of the
39 insurer's determination was mailed by the insurer or the unanswered
40 written request was mailed to the insurer, as applicable. The failure
41 of an insurer to respond to a written request for a determination
42 within 30 days after receipt of such a request shall be deemed by the
43 hearing officer to be a denial of the request.

44 4. Failure to file a request for a hearing within the period
45 specified in subsection 3 may be excused if the person aggrieved



1 shows by a preponderance of the evidence that he did not receive
2 the notice of the determination and the forms necessary to request a
3 hearing. The claimant or employer shall notify the insurer of a
4 change of address.

5 5. The hearing before the hearing officer must be conducted as
6 expeditiously and informally as is practicable.

7 6. The parties to a contested claim may, if the claimant is
8 represented by legal counsel, agree to forego a hearing before a
9 hearing officer and submit the contested claim directly to an appeals
10 officer.

11 *7. In addition to any other evidence submitted to the hearing*
12 *officer, the hearing officer shall consider any report made by a*
13 *physician or chiropractor who performed an independent*
14 *evaluation of the claimant pursuant to section 2 of this act.*

15 **Sec. 6.** NRS 616C.345 is hereby amended to read as follows:

16 616C.345 1. Any party aggrieved by a decision of the
17 hearing officer relating to a claim for compensation may appeal
18 from the decision by filing a notice of appeal with an appeals officer
19 within 30 days after the date of the decision.

20 2. A hearing must not be scheduled until the following
21 information is provided to the appeals officer:

22 (a) The name of:

23 (1) The claimant;

24 (2) The employer; and

25 (3) The insurer or third-party administrator;

26 (b) The number of the claim; and

27 (c) If applicable, a copy of the letter of determination being
28 appealed or, if such a copy is unavailable, the date of the
29 determination and the issues stated in the determination.

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

32 (a) A final determination was rendered pursuant to that
33 procedure; or

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

36 ➤ any party to the dispute may file a notice of appeal within 70
37 days after the date on which the final determination was mailed to
38 the employee, or his dependent, or the unanswered request for
39 resolution was submitted. Failure to render a written determination
40 within 30 days after receipt of such a request shall be deemed by the
41 appeals officer to be a denial of the request.

42 4. Except as otherwise provided in NRS 616C.380, the filing of
43 a notice of appeal does not automatically stay the enforcement of the
44 decision of a hearing officer or a determination rendered pursuant to
45 NRS 616C.305. The appeals officer may order a stay, when



1 appropriate, upon the application of a party. If such an application is
2 submitted, the decision is automatically stayed until a determination
3 is made concerning the application. A determination on the
4 application must be made within 30 days after the filing of the
5 application. If a stay is not granted by the officer after reviewing
6 the application, the decision must be complied with within 10 days
7 after the date of the refusal to grant a stay.

8 5. Except as otherwise provided in subsections 2 and 6, within
9 10 days after receiving a notice of appeal pursuant to this section or
10 NRS 616C.220, 616D.140 or 617.401, or within 10 days after
11 receiving a notice of a contested claim pursuant to subsection 6 of
12 NRS 616C.315, the appeals officer shall:

13 (a) Schedule a hearing on the merits of the appeal or contested
14 claim for a date and time within 90 days after his receipt of the
15 notice at a place in Carson City, Nevada, or Las Vegas, Nevada, or
16 upon agreement of one or more of the parties to pay all additional
17 costs directly related to an alternative location, at any other place of
18 convenience to the parties, at the discretion of the appeals officer;
19 and

20 (b) Give notice by mail or by personal service to all parties to
21 the matter and their attorneys or agents at least 30 days before the
22 date and time scheduled.

23 6. A request to schedule the hearing for a date and time which
24 is:

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

27 (b) More than 90 days after the receipt of the notice or claim,
28 ➔ may be submitted to the appeals officer only if all parties to the
29 appeal or contested claim agree to the request.

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

32 8. Failure to file a notice of appeal within the period specified
33 in subsection 1 or 3 may be excused if the party aggrieved shows by
34 a preponderance of the evidence that he did not receive the notice of
35 the determination and the forms necessary to appeal the
36 determination. The claimant, employer or insurer shall notify the
37 hearing officer of a change of address.

38 *9. In addition to any other evidence submitted to the appeals*
39 *officer, the appeals officer shall consider any report made by a*
40 *physician or chiropractor who performed an independent*
41 *evaluation of the claimant pursuant to section 2 of this act.*

42 **Sec. 7.** NRS 616C.475 is hereby amended to read as follows:

43 616C.475 1. Except as otherwise provided in this section,
44 NRS 616C.175 and 616C.390, every employee in the employ of an
45 employer, within the provisions of chapters 616A to 616D,



1 inclusive, of NRS, who is injured by accident arising out of and in
2 the course of employment, or his dependents, is entitled to receive
3 for the period of temporary total disability, 66 2/3 percent of the
4 average monthly wage.

5 2. Except as otherwise provided in NRS 616B.028 and
6 616B.029, an injured employee or his dependents are not entitled to
7 accrue or be paid any benefits for a temporary total disability during
8 the time the injured employee is incarcerated. The injured employee
9 or his dependents are entitled to receive such benefits when the
10 injured employee is released from incarceration if he is certified as
11 temporarily totally disabled by a physician or chiropractor.

12 3. If a claim for the period of temporary total disability is
13 allowed, the first payment pursuant to this section must be issued by
14 the insurer within 14 working days after receipt of the initial
15 certification of disability and regularly thereafter.

16 4. Any increase in compensation and benefits effected by the
17 amendment of subsection 1 is not retroactive.

18 5. Payments for a temporary total disability must cease when:

19 (a) A physician or chiropractor determines that the employee is
20 physically capable of any gainful employment for which the
21 employee is suited, after giving consideration to the employee's
22 education, training and experience;

23 (b) The employer offers the employee light-duty employment or
24 employment that is modified according to the limitations or
25 restrictions imposed by a physician or chiropractor pursuant to
26 subsection 7; or

27 (c) Except as otherwise provided in NRS 616B.028 and
28 616B.029, the employee is incarcerated.

29 6. Each insurer may, with each check that it issues to an injured
30 employee for a temporary total disability, include a form approved
31 by the Division for the injured employee to request continued
32 compensation for the temporary total disability.

33 7. A certification of disability issued by a physician or
34 chiropractor must:

35 (a) Include the period of disability and a description of any
36 physical limitations or restrictions imposed upon the work of the
37 employee;

38 (b) Specify whether the limitations or restrictions are permanent
39 or temporary; and

40 (c) Be signed by the treating physician or chiropractor
41 authorized pursuant to NRS 616B.527 or appropriately chosen
42 pursuant to subsection 3 of NRS 616C.090 **[H]**, *or by a physician or
43 chiropractor who performed an independent evaluation of the
44 injured employee pursuant to section 2 of this act.*



8. If the certification of disability specifies that the physical limitations or restrictions are temporary, the employer of the employee at the time of his accident may offer temporary, light-duty employment to the employee. If the employer makes such an offer, the employer shall confirm the offer in writing within 10 days after making the offer. The making, acceptance or rejection of an offer of temporary, light-duty employment pursuant to this subsection does not affect the eligibility of the employee to receive vocational rehabilitation services, including compensation, and does not exempt the employer from complying with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations adopted by the Division governing vocational rehabilitation services. Any offer of temporary, light-duty employment made by the employer must specify a position that:

(a) Is substantially similar to the employee's position at the time of his injury in relation to the location of the employment and the hours he is required to work;

(b) Provides a gross wage that is:

(1) If the position is in the same classification of employment, equal to the gross wage the employee was earning at the time of his injury; or

(2) If the position is not in the same classification of employment, substantially similar to the gross wage the employee was earning at the time of his injury; and

(c) Has the same employment benefits as the position of the employee at the time of his injury.

Sec. 8. NRS 616C.540 is hereby amended to read as follows:

616C.540 An insurer, or a private person or public agency providing vocational rehabilitation services to an insurer, shall:

1. Ensure that the work of a vocational rehabilitation counselor who is not certified is supervised and reviewed by a certified vocational rehabilitation counselor.

2. Ensure that the caseload for a vocational rehabilitation counselor who conducts full vocational assessments does not exceed 35 active claims.

3. Employ at least one certified vocational rehabilitation counselor for every four vocational rehabilitation counselors that it employs who are not certified.

4. *Employ vocational rehabilitation counselors who are regularly available to provide services in person within the geographic area.*

Sec. 9. NRS 616C.550 is hereby amended to read as follows:

616C.550 1. Except as otherwise provided in this section, if benefits for a temporary total disability will be paid to an injured employee for more than 90 days, a ***certified*** vocational rehabilitation



1 counselor shall, within 30 days after being assigned to the claim,
2 make a written assessment of the injured employee's ability or
3 potential to return to:

- 4 (a) The position he held at the time that he was injured; or
- 5 (b) Any other gainful employment.

6 2. Before completing the written assessment, the counselor
7 shall:

- 8 (a) Contact the injured employee and:

9 (1) Identify the injured employee's educational background,
10 work experience and career interests; and

11 (2) Determine whether the injured employee has any existing
12 marketable skills.

13 (b) Contact the injured employee's treating physician or
14 chiropractor and determine:

15 (1) Whether the employee has any temporary or permanent
16 physical limitations;

17 (2) The estimated duration of the limitations;

18 (3) Whether there is a plan for continued medical treatment;
19 and

20 (4) When the employee may return to the position that he
21 held at the time of his injury or to any other position. The treating
22 physician or chiropractor shall determine whether an employee may
23 return to the position that he held at the time of his injury.

24 3. The written assessment must contain a determination as to
25 whether the employee is eligible for vocational rehabilitation
26 services pursuant to NRS 616C.590. If the insurer, with the
27 assistance of the counselor, determines that the employee is eligible
28 for vocational rehabilitation services, a plan for a program of
29 vocational rehabilitation must be completed pursuant to
30 NRS 616C.555.

31 4. The Division may, by regulation, require a written
32 assessment to include additional information.

33 5. If an insurer determines that the written assessment required
34 by this section is impractical because of the expected duration of the
35 employee's total temporary disability, the insurer shall:

36 (a) Complete a written report which specifies his reasons for the
37 decision; and

38 (b) Review the claim at least once every 60 days.

39 6. The insurer shall deliver a copy of the written assessment or
40 the report completed pursuant to subsection 5 to the injured
41 employee, his employer, the treating physician or chiropractor and
42 the injured employee's attorney or representative, if applicable.

43 7. For the purposes of this section, "existing marketable skills"
44 include, but are not limited to:

45 (a) Completion of:



- 1 (1) A program at a trade school;
- 2 (2) A program which resulted in an associate's degree; or
- 3 (3) A course of study for certification,
- 4 ➔ if the program or course of study provided the skills and training
- 5 necessary for the injured employee to be gainfully employed on a
- 6 reasonably continuous basis in an occupation that is reasonably
- 7 available in this State.

8 (b) Completion of a 2-year or 4-year program at a college or

9 university which resulted in a degree.

10 (c) Completion of any portion of a program for a graduate's

11 degree at a college or university.

12 (d) Skills acquired in previous employment, including those

13 acquired during an apprenticeship or a program for on-the-job

14 training.

15 ➔ The skills set forth in paragraphs (a) to (d), inclusive, must have

16 been acquired within the preceding 7 years and be compatible with


17 the physical limitations of the injured employee to be considered

18 existing marketable skills.

19 **Sec. 10.** NRS 616C.590 is hereby amended to read as follows:

20 616C.590 1. Except as otherwise provided in this section, an

21 injured employee is not eligible for vocational rehabilitation

22 services  unless:

23 (a) The treating physician or chiropractor , *or a physician or*

24 *chiropractor who performed an independent evaluation of the*

25 *injured employee pursuant to section 2 of this act*, approves the

26 return of the injured employee to work but imposes permanent

27 restrictions that prevent the injured employee from returning to the

28 position that he held at the time of his injury;

29 (b) The injured employee's employer does not offer

30 employment that:

31 (1) The employee is eligible for considering the restrictions

32 imposed pursuant to paragraph (a);

33 (2) Provides a gross wage that is equal to or greater than 80

34 percent of the gross wage that the employee was earning at the time

35 of his injury; and

36 (3) Has the same employment benefits as the position of the

37 employee at the time of his injury; and

38 (c) The injured employee is unable to return to gainful

39 employment with any other employer at a gross wage that is equal

40 to or greater than 80 percent of the gross wage that the employee

41 was earning at the time of his injury.

42 2. If the treating physician or chiropractor imposes permanent

43 restrictions on the injured employee for the purposes of paragraph

44 (a) of subsection 1, he shall specify in writing:



1 (a) The medically objective findings upon which his
2 determination is based; and

3 (b) A detailed description of the restrictions.

4 ➔ The treating physician or chiropractor shall deliver a copy of the
5 findings and the description of the restrictions to the insurer.

6 3. If there is a question as to whether the restrictions imposed
7 upon the injured employee are permanent, the employee may
8 receive vocational rehabilitation services until a final determination
9 concerning the duration of the restrictions is made.

10 4. Vocational rehabilitation services must cease as soon as the
11 injured employee is no longer eligible for the services pursuant to
12 subsection 1.

13 5. An injured employee is not entitled to vocational
14 rehabilitation services solely because the position that he held at the
15 time of his injury is no longer available.

16 6. An injured employee or his dependents are not entitled to
17 accrue or be paid any money for vocational rehabilitation services
18 during the time the injured employee is incarcerated.

19 7. Any injured employee eligible for compensation other than
20 accident benefits may not be paid those benefits if he refuses
21 counseling, training or other vocational rehabilitation services
22 offered by the insurer. Except as otherwise provided in NRS
23 616B.028 and 616B.029, an injured employee shall be deemed to
24 have refused counseling, training and other vocational rehabilitation
25 services while he is incarcerated.

26 8. If an insurer cannot locate an injured employee for whom it
27 has ordered vocational rehabilitation services, the insurer may close
28 his claim 21 days after the insurer determines that the employee
29 cannot be located. The insurer shall make a reasonable effort to
30 locate the employee.

31 9. The reappearance of the injured employee after his claim has
32 been closed does not automatically reinstate his eligibility for
33 vocational rehabilitation benefits. If the employee wishes to
34 reestablish his eligibility for those benefits, he must file a written
35 application with the insurer to reinstate his claim. The insurer shall
36 reinstate the employee's claim if good cause is shown for the
37 employee's absence.

38 **Sec. 11.** This act becomes effective upon passage and approval
39 for the purpose of adopting any regulations required to carry out the
40 provisions of section 3 of this act and on January 1, 2006, for all
41 other purposes.



