

SENATE BILL NO. 226—SENATOR CARLTON

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing payment of certain workers' compensation claims. (BDR 53-891)

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; limiting the amount of money that a provider of health care is entitled to be paid for providing treatment or other services to an injured employee under certain circumstances; 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 an 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 establishes a limit on the amount that a health care provider may be
12 paid on a claim that has been denied by the entity administering the workers'
13 compensation claim. This bill also provides that if, on appeal, the entity
14 administering the workers' compensation claim is found to be responsible for the
15 payment or otherwise accepts responsibility for the payment, the entity is required
16 to reimburse the injured employee directly or reimburse certain health insurers and
17 casualty insurers that paid for the treatment or other services on behalf of the
18 injured employee. This bill also allows the injured employee or insurer to recover
19 from the health care provider any amount that it paid in excess over the amount that
20 the health care provider was entitled to receive for the treatment or other services
21 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 ~~{ff:~~
31 ~~1. An}~~



1 1. Except as otherwise provided in this section, if a provider
2 of health care provides treatment or other services that an injured
3 employee alleges are related to an industrial injury or
4 occupational disease and an insurer, an organization for managed
5 care, a third-party administrator or an employer who provides
6 accident benefits for injured employees pursuant to NRS 616C.265
7 denies authorization or responsibility for payment for *the* treatment
8 or other services ~~[provided by a]~~, *the* provider of health care ~~[that~~
9 ~~the injured employee alleges are related to an industrial injury or~~
10 ~~occupational disease;~~

11 ~~2. The]~~ is entitled to be paid for the treatment or other
12 services as follows:

13 (a) If the treatment or other services will be paid by a health
14 insurer which has a contract with the provider of health care
15 under a health benefit plan that covers the injured employee, the
16 provider of health care is entitled to be paid the amount that is
17 allowed for the treatment or other services under that contract.

18 (b) If the treatment or other services will be paid by a health
19 insurer which does not have a contract with the provider of health
20 care as set forth in paragraph (a) or by a casualty insurer or the
21 injured employee, the provider of health care is entitled to be paid
22 not more than:

23 (1) The amount which is allowed for the treatment or other
24 services set forth in the schedule of fees and charges established
25 pursuant to NRS 616C.260; or

26 (2) If the insurer which denied authorization or
27 responsibility for the payment has contracted with an organization
28 for managed care or with providers of health care pursuant to
29 NRS 616B.527, the amount that is allowed for the treatment or
30 other services under that contract.

31 2. The provisions of subsection 1 apply only to treatment or
32 other services provided by the provider of health care before the
33 date on which the insurer, organization for managed care, third-
34 party administrator or employer who provides accident benefits
35 first denies authorization or responsibility for payments for the
36 alleged industrial injury or occupational disease.

37 3. If:

38 (a) The injured employee pays ~~[in protest]~~ for the treatment or
39 other services ~~[-and]~~

40 ~~3. A]~~ or a health or casualty insurer pays for the treatment or
41 other services on behalf of the injured employee;

42 (b) The injured employee requests a hearing before a hearing
43 officer or appeals officer regarding the denial of coverage; and



1 (c) *The* hearing officer or appeals officer ultimately determines
2 that the treatment or other services should have been covered, or the
3 insurer, organization for managed care, third-party administrator or
4 employer who provides accident benefits subsequently accepts
5 responsibility for payment,

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

17 4. *If the injured employee or the health or casualty insurer*
18 *paid the provider of health care any amount in excess of the*
19 *amount that the provider would have been entitled to be paid*
20 *pursuant to this section, the injured employee or the health or*
21 *casualty insurer is entitled to recover the excess amount from the*
22 *provider.* Within 30 days after receiving ~~[the payment,]~~ *notice of*
23 *such an excess amount,* the provider of health care shall reimburse
24 the injured employee *or the health or casualty insurer* for the
25 *excess amount.* ~~[paid in protest by him.]~~

26 5. *As used in this section:*

27 (a) *“Casualty insurer” means any insurer or other*
28 *organization providing coverage or benefits under a policy or*
29 *contract of casualty insurance in the manner described in*
30 *subsection 2 of NRS 681A.020.*

31 (b) *“Health benefit plan” means any type of policy, contract,*
32 *agreement or plan providing health coverage or benefits in*
33 *accordance with state or federal law.*

34 (c) *“Health insurer” means any insurer or other organization*
35 *providing health coverage or benefits in accordance with state or*
36 *federal law.*

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

38 616C.330 1. The hearing officer shall:

39 (a) Except as otherwise provided in subsection 2 of NRS
40 616C.315, within 5 days after receiving a request for a hearing, set
41 the hearing for a date and time within 30 days after his receipt of the
42 request at a place in Carson City, Nevada, or Las Vegas, Nevada, or
43 upon agreement of one or more of the parties to pay all additional
44 costs directly related to an alternative location, at any other place of
45 convenience to the parties, at the discretion of the hearing officer;



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

4 (c) Conduct hearings expeditiously and informally.

5 2. The notice must include a statement that the injured
6 employee may be represented by a private attorney or seek
7 assistance and advice from the Nevada Attorney for Injured
8 Workers.

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

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

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

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

39 7. The hearing officer shall render his decision within 15 days
40 after:

41 (a) The hearing; or

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



1 8. The hearing officer shall render his decision in the most
2 efficient format developed by the Chief of the Hearings Division of
3 the Department of Administration.

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

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

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

18 616C.360 1. A stenographic or electronic record must be kept
19 of the hearing before the appeals officer and the rules of evidence
20 applicable to contested cases under chapter 233B of NRS apply to
21 the hearing.

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

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

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

39 (b) If the medical question or dispute is relevant to an issue
40 involved in the matter before the appeals officer and all parties agree
41 to the submission of the matter to an external review organization,
42 submit the matter to an external review organization in accordance
43 with NRS 616C.363 and any regulations adopted by the
44 Commissioner.



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

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

6. 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.

7. 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.

8. 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.

Sec. 5. The provisions of this act do not apply to treatment or other services provided by a provider of health care to an injured employee before July 1, 2005.

Sec. 6. Sections 1, 2, 3 and 4 of Senate Bill No. 121 of this session are hereby repealed.

Sec. 7. This act becomes effective on July 1, 2005.

TEXT OF REPEALED SECTIONS

Section 1 of Senate Bill No. 121 of this session:

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

616C.135 1. A provider of health care who accepts a patient as a referral for the treatment of an industrial injury or an occupational disease may not charge the patient for any



treatment related to the industrial injury or occupational disease, but must charge the insurer. The provider of health care may charge the patient for any services that are not related to the employee's industrial injury or occupational disease.

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

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

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

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

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

Section 2 of Senate Bill No. 121 of this session:

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

616C.138 *1.* If:

~~1-1~~ (a) An insurer, an organization for managed care, a third-party administrator or an employer who provides accident benefits for injured employees pursuant to NRS 616C.265 denies authorization or responsibility for payment for treatment or other services provided by a provider of health care that the injured employee alleges are related to an industrial injury or occupational disease;

~~2-1~~ (b) The injured employee pays in protest for the treatment or other services ~~and~~

~~3-1~~ *or a health or casualty insurer pays for the treatment or other services on behalf of the injured employee; and*

(c) A hearing officer or appeals officer ultimately determines that the treatment or other services should have been covered, or the insurer, organization for managed care,



third-party administrator or employer who provides accident benefits subsequently accepts responsibility for payment, ➡ the hearing officer or appeals officer shall order the insurer, organization for managed care, third-party administrator or employer who provides accident benefits to pay to the ~~[provider of health care]~~ *injured employee or the health or casualty insurer* the amount which *the injured employee or the health or casualty insurer paid that* is allowed for the treatment or other services set forth in the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract.

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

3. *As used in this section:*

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

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

Section 3 of Senate Bill No. 121 of this session:

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

616C.330 1. The hearing officer shall:

(a) Except as otherwise provided in subsection 2 of NRS 616C.315, within 5 days after receiving a request for a hearing, set the hearing for a date and time within 30 days after his receipt of the request at a place in Carson City, Nevada, or Las Vegas, Nevada, or upon agreement of one or more of the parties to pay all additional costs directly related to an alternative location, at any other place of convenience to the parties, at the discretion of the hearing officer;



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

(c) Conduct hearings expeditiously and informally.

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

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

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

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

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

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

(a) The hearing; or



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

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

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

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

Section 4 of Senate Bill No. 121 of this session:

Sec. 4. 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 there is a medical question or dispute concerning an injured employee's condition or concerning the necessity of treatment for which authorization for payment has been denied, the appeals officer may:

(a) Refer the employee to a physician or chiropractor of his choice who has demonstrated special competence to treat the particular medical condition of the employee. 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.



(b) If the medical question or dispute is relevant to an issue involved in the matter before the appeals officer and all parties agree to the submission of the matter to an external review organization, submit the matter to an external review organization in accordance with NRS 616C.363 and any regulations adopted by the Commissioner.

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

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

6. 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.

7. 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.

8. 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.

