

Amendment No. CA9

First Conference Committee Amendment to (BDR 53-897)
Assembly Bill No. 496 Second Reprint

Proposed by: First Conference Committee

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

TMC



Date: 6/2/2007

A.B. No. 496—Makes various changes concerning workers' compensation.
(BDR 53-897)



ASSEMBLY BILL NO. 496—COMMITTEE ON COMMERCE AND LABOR

MARCH 22, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning workers' compensation.
(BDR 53-897)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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

AN ACT relating to workers' compensation; **revising provisions governing employee leasing companies**; revising various duties of employers, insurers and claimants under the workers' compensation system; revising certain procedures for accepting and denying workers' compensation claims; **prohibiting certain acts by vocational rehabilitation counselors; declaring void certain limiting provisions in an employer's policy of uninsured or underinsured vehicle coverage; providing for the creation of a code of conduct for hearing officers and appeals officers; revising provisions governing the provision of vocational rehabilitation services**; revising certain provisions relating to occupational diseases; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the payment of workers' compensation if, during the course of employment, an employee is injured or killed by a workplace accident or occupational disease. (Chapters 616A-617 of NRS) Existing law authorizes an employer, after a workplace accident, to furnish the injured employee with the name of at least one physician or chiropractor qualified to examine the employee, but the employer may not require the employee to select any particular physician or chiropractor for the examination. The examining physician or chiropractor must report to the employer regarding the character and extent of the injury, but the employer may not require or permit the disclosure of any other information concerning the employee's physical condition. (NRS 616C.010)

This bill makes various changes to the law governing workers' compensation. Section 1 of this bill requires employee leasing companies to maintain certain records relating to workers' compensation insurance. Section 1.2 of this bill provides for the recalculation of the average monthly wage of an injured employee. Section 1.25 of this bill authorizes an insurer to deny compensation to an injured employee based on his discharge from employment for misconduct. Section 1.3 of this bill prohibits a vocational rehabilitation counselor from engaging in certain acts, and section 19 of this bill provides for the imposition of an administrative fine for a violation of that prohibition. Section 1.35 of this bill regulates the payment of compensation to an injured employee in a lump sum. Section ~~1.4~~ 1.4 of this bill requires an employer ~~whose insurer has contracted~~

~~with certain managed care organizations or providers of health care services] to furnish [the] an injured employee with the names of at least two physicians or chiropractors who are qualified to examine the employee . [and who are available pursuant to the contract, if there are two or more such physicians or chiropractors within 30 miles of the employee's place of employment. If there are not two such physicians or chiropractors within that area, the employer is required to furnish the name of at least one physician who is qualified to examine the employee and available pursuant to the contract. Further, section 1 imposes similar requirements upon employers whose insurers have not contracted with such managed care organizations or providers of health care services, except that the employers are required to furnish only the names of physicians and chiropractors who are qualified to conduct the examinations without regard as to whether they are available pursuant to any particular contract. From among the names furnished by the employer, the employee must select one of those physicians or chiropractors to conduct the examination, but the employee is not required to select a particular physician or chiropractor from among the names furnished. Section 1 of this bill also clarifies that the employer shall not require or permit the disclosure of any other information concerning the employee's physical condition except as required by NRS 616C.177, which permits an insurer to inquire about and request medical records concerning a preexisting medical condition that is reasonably related to the industrial injury of the injured employee.~~

~~Existing law requires an insurer to accept or deny claims involving industrial injuries and occupational diseases within a certain period. (NRS 616C.065, 617.356) Sections 1.5 and 3 of this bill require the insurer to mail its written determination regarding a claim to the claimant or the person acting on behalf of the claimant within the specified period and, if the insurer denies the claim in whole or in part, to obtain a certificate of mailing at the time the written determination of the denial of the claim is delivered to the United States Postal Service for mailing. The certificate of mailing serves as a receipt that shows the date on which the insurer mailed the written determination of the denial of a claim.] Sections 1.5, 3 and 5 of this bill revise provisions governing claims for compensation. Section 4 of this bill provides that certain provisions in an employer's policy of uninsured or underinsured vehicle coverage that limit certain rights of injured employees or insurers are void. Section 6 of this bill provides for the creation of a code of conduct for hearing officers and appeals officers who conduct hearings relating to workers' compensation, and for the establishment of standards for the initial training and continuing education of such persons. Sections 7-11 of this bill revise certain provisions governing hearings and appeals in workers' compensation cases. Sections 12-15 of this bill revise certain provisions governing the payment of compensation for injuries or death. Sections 16-18 of this bill revise certain provisions governing the provision of vocational rehabilitation services. Section 19 of this bill reduces the amount of certain benefit penalties that may be imposed for certain violations.~~

Existing law establishes certain general requirements which are used to determine whether a disease is compensable as an occupational disease. (NRS 617.440) However, existing law also provides that for some specific diseases, such as certain cancers, lung diseases, heart diseases and contagious diseases, there is a legal presumption that those diseases are compensable under the workers' compensation system when contracted under certain specific circumstances, such as when contracted by firefighters, police officers and emergency medical attendants. (NRS 617.453, 617.455, 617.457, 617.485, 617.487) **Section 21** of this bill provides that the general requirements of NRS 617.440 do not apply to the specific provisions of existing law which create such legal presumptions.

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

Section 1. NRS 616B.682 is hereby amended to read as follows:

616B.682 Each employee leasing company operating in this State shall
[maintain] :

1. Maintain an office or similar site in this State for retaining, reviewing and auditing its payroll records and written agreements with client companies.

2. Maintain at that office or similar site in this State records establishing that the employee leasing company maintains current policies of workers' compensation insurance providing coverage for each employee it leases to each client company.

3. Keep the records described in subsection 2 open for inspection and copying, during its regular business hours, by:

(a) Each employee it leases to each client company and any representative of each such employee; and

(b) The public.

Sec. 1.1. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 1.2 to 1.35, inclusive, of this act.

Sec. 1.2. 1. Notwithstanding the provisions of subsection 3 of NRS 616C.315 and except as otherwise provided in this section, if an injured employee is receiving compensation based on a calculation of his average monthly wage as determined pursuant to the regulations adopted by the Administrator pursuant to NRS 616C.420, the injured employee or the employer may request a hearing before a hearing officer pursuant to the provisions of NRS 616C.315 to 616C.385, inclusive, asking for a recalculation of the average monthly wage of the injured employee.

2. The injured employee is entitled to have his average monthly wage recalculated if he proves by a preponderance of the evidence that the insurer calculated his average monthly wage improperly or incorrectly as a result of:

(a) The use of any improper or incorrect information or methodology;

(b) The failure to use any proper or correct information or methodology;

(c) Any error of law or fact; or

(d) Any other error, omission, neglect or wrongful act.

3. If the injured employee proves that the insurer calculated his average monthly wage improperly or incorrectly, resulting in an underpayment of compensation:

(a) The insurer shall:

(1) Increase the injured employee's future compensation based on the correct average monthly wage; and

(2) Pay the injured employee a lump sum in an amount equal to the underpayment of compensation for the period during which the insurer was using the incorrect average monthly wage; and

(b) The remedy provided in paragraph (a) is the sole remedy for the underpayment and the insurer is not subject to the imposition of any fine or benefit penalty therefor.

4. If the hearing officer determines that the calculation of the average monthly wage resulted in an overpayment of compensation, the insurer may require the injured employee to repay to the insurer an amount equal to the overpayment received by the injured employee during any one 30-day period.

1 5. The average monthly wage of an injured employee may not be challenged
2 by the insurer, the employer or the injured employee after the date on which any
3 portion of an award for permanent partial disability is paid or the claim closes,
4 whichever occurs first.

5 6. The provisions of this section do not apply if the issue of the average
6 monthly wage of the injured employee was previously adjudicated to a final
7 decision in:

8 (a) A hearing before a hearing officer or appeals officer pursuant to the
9 provisions of NRS 616C.315 to 616C.385, inclusive; or

10 (b) Any proceedings for judicial review.

11 Sec. 1.25. 1. If an injured employee is discharged from his employment
12 as a result of misconduct, an insurer may deny compensation to the injured
13 employee because of that discharge for misconduct only if the insurer proves by a
14 preponderance of the evidence that:

15 (a) The injured employee was discharged from his employment solely for his
16 misconduct and not for any reason relating to his claim for compensation; and

17 (b) It is the injured employee's discharge from his employment for
18 misconduct, and not his injury, that is the sole cause for the injured employee's
19 inability to return to work with the preinjury employer.

20 2. An insurer waives its rights under subsection 1 if the insurer does not
21 make a determination to deny or suspend compensation to the injured employee
22 within 70 days after the date on which the insurer learns that the injured
23 employee has been discharged for misconduct.

24 Sec. 1.3. A vocational rehabilitation counselor shall not:

25 1. Offer payment of compensation in a lump sum in lieu of the provision of
26 vocational rehabilitation services to an injured employee:

27 (a) Without providing written notice of the offer to the attorney for the
28 injured employee; or

29 (b) If the injured employee is not represented by an attorney, without
30 providing a written notice to the employee which satisfies the requirements of the
31 notice required by paragraph (c) of subsection 3 of NRS 616C.595;

32 2. Offer any monetary payment to an injured employee in an amount that is
33 less than the amount authorized by the insurer;

34 3. Make any false statement or implication that an injured employee must
35 make a decision regarding vocational rehabilitation within a certain period of
36 time;

37 4. Advise an insured or claimant not to seek legal counsel; or

38 5. Provide legal advice to a claimant.

39 Sec. 1.35. 1. Except as otherwise provided in subsection 2, an insurer
40 shall, within 30 days after receiving a written request from an injured employee
41 for payment of compensation in a lump sum in lieu of the provision of vocational
42 rehabilitation services, respond in writing to the request and, if the insurer agrees
43 to the request, include in the response:

44 (a) The amount of the lump sum that the insurer is offering to pay;

45 (b) A statement that the injured employee has 30 days after the date of the
46 written response to accept or reject the lump-sum offer; and

47 (c) A statement indicating that, if the injured employee rejects the lump-sum
48 offer, he must continue working with his vocational rehabilitation counselor in
49 accordance with the provisions of this chapter and the regulations adopted
50 pursuant thereto.

51 2. An insurer need only respond to a written request from an injured
52 employee for payment of compensation in a lump sum in lieu of the provision of

vocational rehabilitation services if the injured employee is eligible for vocational rehabilitation services.

~~[Section 1.]~~ **Sec. 1.4.** NRS 616C.010 is hereby amended to read as follows:

616C.010 1. Whenever any accident occurs to any employee, he shall forthwith report the accident and the injury resulting therefrom to his employer.

2. When an employer learns of an accident, whether or not it is reported, the employer may direct the employee to submit to, or the employee may request, an examination by a physician or chiropractor, in order to ascertain the character and extent of the injury and render medical attention which is required immediately. The employer ~~[may]~~ shall:

(a) *If the employer's insurer has entered into a contract with an organization for managed care or with providers of health care pursuant to NRS 616B.527, furnish the names, addresses and telephone numbers of ~~[one]~~:*

(1) *Two or more physicians or chiropractors ~~[]~~ who are qualified to conduct the examination and who are available pursuant to the terms of the contract, if there are two or more such physicians or chiropractors within 30 miles of the employee's place of employment; or*

(2) *One or more physicians or chiropractors who are qualified to conduct the examination and who are available pursuant to the terms of the contract, if there are not two or more such physicians or chiropractors within 30 miles of the employee's place of employment.*

(b) *If the employer's insurer has not entered into a contract with an organization for managed care or with providers of health care pursuant to NRS 616B.527, furnish the names, addresses and telephone numbers of:*

(1) *Two or more physicians or chiropractors who are qualified to conduct the examination, if there are two or more such physicians or chiropractors within 30 miles of the employee's place of employment; or*

(2) *One or more physicians or chiropractors who are qualified to conduct the examination, if there are not two or more such physicians or chiropractors within 30 miles of the employee's place of employment.*

3. *From among the names furnished by the employer pursuant to subsection 2, the employee shall select one of those physicians or chiropractors to conduct the examination, but ~~[may]~~ the employer shall not require the employee to select ~~[any]~~ a particular physician or chiropractor ~~[]~~ from among the names furnished by the employer.* Thereupon, the examining physician or chiropractor shall report forthwith to the employer and to the insurer the character and extent of the injury. The employer shall not require the employee to disclose or permit the disclosure of any other information concerning his physical condition ~~[]~~ *except as required by NRS 616C.177.*

~~[]~~ 4. Further medical attention, except as otherwise provided in NRS 616C.265, must be authorized by the insurer.

~~[]~~ 5. This section does not prohibit an employer from requiring the employee to submit to an examination by a physician or chiropractor specified by the employer at any convenient time after medical attention which is required immediately has been completed.

Sec. 1.5. NRS 616C.065 is hereby amended to read as follows:

616C.065 1. Except as otherwise provided in NRS 616C.136, within 30 days after the insurer has been notified of an industrial accident, every insurer shall:

(a) ~~[Commence payment of]~~ *Accept* a claim for compensation ~~[]~~, *notify the claimant or the person acting on behalf of the claimant that the claim has been accepted and commence payment of the claim;* or

(b) Deny the claim and notify the claimant *or the person acting on behalf of the claimant* and the Administrator that the claim has been denied.

2. Payments made by an insurer pursuant to this section are not an admission of liability for the claim or any portion of the claim.

~~2.~~ 3. Except as otherwise provided in this subsection, if an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. This payment is for the benefit of the claimant and must be paid to him with the compensation assessed pursuant to chapters 616A to 617, inclusive, of NRS. The provisions of this section do not apply to the payment of a bill for accident benefits that is governed by the provisions of NRS 616C.136.

4. *The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 by:*

(a) *Mailing its written determination to the claimant or the person acting on behalf of the claimant; and*

(b) *If the claim has been denied, in whole or in part, obtaining a certificate of mailing.*

5. *The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection 4 shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.*

6. *Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.*

7. *For the purposes of this section, the insurer shall mail the written determination to:*

(a) *The mailing address of the claimant or the person acting on behalf of the claimant that is provided on the form prescribed by the Administrator for filing the claim; or*

(b) *Another mailing address if the claimant or the person acting on behalf of the claimant provides to the insurer written notice of another mailing address.*

8. *As used in this section, "certificate of mailing" means a receipt that provides evidence of the date on which the insurer presented its written determination to the United States Postal Service for mailing.*

Sec. 2. (Deleted by amendment.)

Sec. 3. **NRS 616C.070 is hereby amended to read as follows:**

616C.070 1. A person is conclusively presumed to be totally dependent upon an injured or deceased employee if ~~the~~ :

(a) The person is a natural, posthumous or adopted child, whether legitimate or illegitimate, under the age of 18 years ~~or over that age if~~ ; or

(b) The person is a natural, posthumous or adopted child, there is no surviving parent and the person is:

(1) Over the age of 18 years and physically or mentally incapacitated from wage earning ~~and there is no surviving parent~~ ; or

(2) Over the age of 18 years but under the age of 22 years and enrolled as a full-time student in an accredited vocational or educational institution.

2. Stepparents may be regarded in chapters 616A to 616D, inclusive, or chapter 617 of NRS as parents if the fact of dependency is shown, and a stepchild or stepchildren may be regarded in chapters 616A to 616D, inclusive, or chapter

617 of NRS as a natural child or children if the existence and fact of dependency are shown.

~~14.3~~ **3.** Except as otherwise provided in subsection ~~14.3~~ **14** of NRS 616C.505, questions as to who constitute dependents and the extent of their dependency must be determined as of the date of the accident or injury to the employee, and their right to any benefit becomes fixed at that time, irrespective of any subsequent change in conditions, and the benefits are directly recoverable by and payable to the dependent or dependents entitled thereto or to their legal guardians or trustees.

~~14.4~~ **4.** The presumptions of this section do not apply in favor of aliens who are nonresidents of the United States at the time of the accident, injury to, or death of the employee.

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

616C.215 1. If an injured employee or, in the event of his death, his dependents, bring an action in tort against his employer to recover payment for an injury which is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and, notwithstanding the provisions of NRS 616A.020, receive payment from the employer for that injury:

(a) The amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the amount paid by the employer.

(b) The insurer, or in the case of claims involving the uninsured employer's claim account or a subsequent injury account the Administrator, has a lien upon the total amount paid by the employer if the injured employee or his dependents receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

↳ This subsection is applicable whether the money paid to the employee or his dependents by the employer is classified as a gift, a settlement or otherwise. The provisions of this subsection do not grant to an injured employee any right of action in tort to recover damages from his employer for his injury.

2. When an employee receives an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and which was caused under circumstances creating a legal liability in some person, other than the employer or a person in the same employ, to pay damages in respect thereof:

(a) The injured employee, or in case of death his dependents, may take proceedings against that person to recover damages, but the amount of the compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the amount of the damages recovered, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

(b) If the injured employee, or in case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the insurer, or in case of claims involving the uninsured employers' claim account or a subsequent injury account the Administrator, has a right of action against the person so liable to pay damages and is subrogated to the rights of the injured employee or of his dependents to recover therefor.

3. When an injured employee incurs an injury for which compensation is payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS and which was caused under circumstances entitling him, or in the case

of death his dependents, to receive proceeds under his employer's policy of uninsured or underinsured vehicle coverage:

(a) The injured employee, or in the case of death his dependents, may take proceedings to recover those proceeds, but the amount of compensation the injured employee or his dependents are entitled to receive pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, including any future compensation, must be reduced by the amount of proceeds received.

(b) If an injured employee, or in the case of death his dependents, receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS, the insurer, or in the case of claims involving the uninsured employers' claim account or a subsequent injury account the Administrator, is subrogated to the rights of the injured employee or his dependents to recover proceeds under the employer's policy of uninsured or underinsured vehicle coverage. The insurer and the Administrator are not subrogated to the rights of an injured employee or his dependents under a policy of uninsured or underinsured vehicle coverage purchased by the employee.

(c) Any provision in the employer's policy of uninsured or underinsured vehicle coverage which has the effect of:

(1) Limiting the rights of the injured employee or his dependents to recover proceeds under the policy because of the receipt of any compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS;

(2) Limiting the rights of subrogation of the insurer or Administrator provided by paragraph (b); or

(3) Excluding coverage which inures to the direct or indirect benefit of the insurer or Administrator,

is void.

4. In any action or proceedings taken by the insurer or the Administrator pursuant to this section, evidence of the amount of compensation, accident benefits and other expenditures which the insurer, the uninsured employers' claim account or a subsequent injury account have paid or become obligated to pay by reason of the injury or death of the employee is admissible. If in such action or proceedings the insurer or the Administrator recovers more than those amounts, the excess must be paid to the injured employee or his dependents.

5. In any case where the insurer or the Administrator is subrogated to the rights of the injured employee or of his dependents as provided in subsection 2 or 3, the insurer or the Administrator has a lien upon the total proceeds of any recovery from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement or otherwise. The injured employee, or in the case of his death his dependents, are not entitled to double recovery for the same injury, notwithstanding any act or omission of the employer or a person in the same employ which was a direct or proximate cause of the employee's injury.

6. The lien provided for pursuant to subsection 1 or 5 includes the total compensation expenditure incurred by the insurer, the uninsured employers' claim account or a subsequent injury account for the injured employee and his dependents.

7. An injured employee, or in the case of death his dependents, or the attorney or representative of the injured employee or his dependents, shall notify the insurer, or in the case of claims involving the uninsured employers' claim account or a subsequent injury account the Administrator, in writing before initiating a proceeding or action pursuant to this section.

1 8. Within 15 days after the date of recovery by way of actual receipt of the
2 proceeds of the judgment, settlement or otherwise:

3 (a) The injured employee or his dependents, or the attorney or representative of
4 the injured employee or his dependents; and

5 (b) The third-party insurer,

6 shall notify the insurer, or in the case of claims involving the uninsured
7 employers' claim account or a subsequent injury account the Administrator, of the
8 recovery and pay to the insurer or the Administrator, respectively, the amount due
9 pursuant to this section together with an itemized statement showing the
10 distribution of the total recovery. The attorney or representative of the injured
11 employee or his dependents and the third-party insurer are jointly and severally
12 liable for any amount to which an insurer is entitled pursuant to this section if the
13 attorney, representative or third-party insurer has knowledge of the lien provided
14 for in this section.

15 9. An insurer shall not sell its lien to a third-party insurer unless the injured
16 employee or his dependents, or the attorney or representative of the injured
17 employee or his dependents, refuses to provide to the insurer information
18 concerning the action against the third party.

19 10. In any trial of an action by the injured employee, or in the case of his
20 death by his dependents, against a person other than the employer or a person in the
21 same employ, the jury must receive proof of the amount of all payments made or to
22 be made by the insurer or the Administrator. The court shall instruct the jury
23 substantially as follows:

24
25 Payment of workmen's compensation benefits by the insurer, or in the
26 case of claims involving the uninsured employers' claim account or a
27 subsequent injury account the Administrator, is based upon the fact that a
28 compensable industrial accident occurred, and does not depend upon blame
29 or fault. If the plaintiff does not obtain a judgment in his favor in this case,
30 he is not required to repay his employer, the insurer or the Administrator
31 any amount paid to him or paid on his behalf by his employer, the insurer
32 or the Administrator.

33 If you decide that the plaintiff is entitled to judgment against the
34 defendant, you shall find his damages in accordance with the court's
35 instructions on damages and return your verdict in the plaintiff's favor in
36 the amount so found without deducting the amount of any compensation
37 benefits paid to or for the plaintiff. The law provides a means by which any
38 compensation benefits will be repaid from your award.
39

40 11. To calculate an employer's premium, the employer's account with the
41 private carrier must be credited with an amount equal to that recovered by the
42 private carrier from a third party pursuant to this section, less the private carrier's
43 share of the expenses of litigation incurred in obtaining the recovery, except that the
44 total credit must not exceed the amount of compensation actually paid or reserved
45 by the private carrier on the injured employee's claim.

46 12. As used in this section, "third-party insurer" means an insurer that issued
47 to a third party who is liable for damages pursuant to subsection 2, a policy of
48 liability insurance the proceeds of which are recoverable pursuant to this section.
49 The term includes an insurer that issued to an employer a policy of uninsured or
50 underinsured vehicle coverage.

51 **Sec. 5. NRS 616C.235 is hereby amended to read as follows:**

52 616C.235 1. Except as otherwise provided in subsections 2, 3 and 4:

(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 and, if the insurer has been notified that the claimant is represented by an attorney, to the attorney for the claimant by first-class mail addressed to the last known address of the attorney. The notice must include , on a separate page, a statement describing the effects of closing a claim pursuant to this section and 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 , including, without limitation, a statement which prominently displays the limit on the time that the claimant has to request a resolution of the dispute as set forth in NRS 616C.315. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection 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, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than \$300, the insurer may close the claim at any time after he sends, by first-class mail addressed to the last known address of the claimant, written notice that includes a statement which prominently displays that:

(a) The claim is being closed pursuant to this subsection;

(b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS 616C. 305 and 616C.315 to 616C.385, inclusive; and

(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.

3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than \$300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:

(a) Sent by first-class mail addressed to the last known address of the claimant; and

(b) A document that is separate from any other document or form that is used by the insurer.

4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.

Sec. 6. NRS 616C.295 is hereby amended to read as follows:

616C.295 1. The Chief of the Hearings Division shall adopt regulations establishing:

(a) A code of conduct for hearing officers who conduct hearings in contested cases for compensation under chapters 616A to 617, inclusive, of NRS; and

(b) A code of conduct for appeals officers who conduct hearings and appeals as required pursuant to chapters 616A to 617, inclusive, of NRS.

2. The codes of conduct established pursuant to subsection 1 must be designed to ensure fairness and impartiality, and to avoid the appearance of impropriety.

1 3. The Chief of the Hearings Division shall adopt regulations establishing:
2 (a) Standards for the initial training and continuing education of hearing
3 officers who conduct hearings in contested cases for compensation under
4 chapters 616A to 617, inclusive, of NRS; and

5 (b) Standards for the initial training and continuing education of appeals
6 officers who conduct hearings and appeals as required pursuant to chapters
7 616A to 617, inclusive, of NRS.

8 4. The standards established pursuant to subsection 3 must, without
9 limitation, include training and continuing education in:

10 (a) The provisions of chapters 616A to 617, inclusive, of NRS;

11 (b) Dispute resolution; and

12 (c) Mediation.

13 5. The Chief of the Hearings Division shall:

14 (a) Prescribe by regulation the qualifications ~~and training~~ required before a
15 person may, pursuant to chapters 616A to ~~616D, inclusive, or chapter~~ 617 ~~and~~
16 ~~inclusive,~~ of NRS, serve as a hearing officer. ~~Training for a hearing officer must~~
17 ~~include techniques of mediation.~~

18 (b) Provide for the expediting of the hearing of cases that involve the
19 termination or denial of compensation.

20 ~~2. 6.~~ From the cases heard each year by hearing officers and appeals officers
21 regarding claims for benefits by injured employees, the Chief of the Hearings
22 Division shall prepare an annual report which itemizes, on the basis of each insurer
23 and third-party administrator, the number of cases affirmed, reversed, remanded
24 and resolved by other disposition involving that insurer or third-party administrator,
25 including a breakdown of that information by the type of benefits denied by the
26 insurer or third-party administrator.

27 ~~3. 7.~~ As used in this section, "Chief of the Hearings Division" means the
28 Chief of the Hearings Division of the Department of Administration.

29 **Sec. 7. NRS 616C.315 is hereby amended to read as follows:**

30 616C.315 1. Any person who is subject to the jurisdiction of the hearing
31 officers pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may
32 request a hearing before a hearing officer of any matter within the hearing officer's
33 authority. The insurer shall provide, without cost, the forms necessary to request a
34 hearing to any person who requests them.

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

37 (a) The name of:

38 (1) The claimant;

39 (2) The employer; and

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

41 (b) The number of the claim; and

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

45 3. Except as otherwise provided in NRS 616B.772, 616B.775, 616B.787 and
46 616C.305, and section 1.2 of this act, a person who is aggrieved by:

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

48 (b) The failure of an insurer to respond within 30 days to a written request
49 mailed to the insurer by the person who is aggrieved,

50 ➤ may appeal from the determination or failure to respond by filing a request for a
51 hearing before a hearing officer. Such a request must include the information
52 required pursuant to subsection 2 and except as otherwise provided in subsections

4 and 5. must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. The failure of an insurer to respond to a written request for a determination within 30 days after receipt of such a request shall be deemed by the hearing officer to be a denial of the request.

4. The period specified in subsection 3 within which a request for a hearing must be filed may be extended for an additional 90 days if the person aggrieved shows by a preponderance of the evidence that he was diagnosed with a terminal illness or was informed of the death or diagnosis of a terminal illness of his spouse, parent or child.

5. Failure to file a request for a hearing within the period specified in subsection 3 may be excused if the person aggrieved shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to request a hearing. The claimant or employer shall notify the insurer of a change of address.

~~5.4~~ 6. The hearing before the hearing officer must be conducted as expeditiously and informally as is practicable.

~~6.4~~ 7. The parties to a contested claim may, if the claimant is represented by legal counsel, agree to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer.

Sec. 8. 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 order an independent medical examination, which must not involve treatment, and 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. whether or not the physician or chiropractor is on the insurer's panel of providers of health care. 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.

Sec. 9. NRS 616C.340 is hereby amended to read as follows:

616C.340 1. The Governor shall appoint one or more appeals officers to conduct hearings and appeals as required pursuant to chapters 616A to 617, inclusive, of NRS. Each appeals officer shall hold office for 2 years 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. 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, he shall disqualify himself from hearing the case.

4. The Governor may appoint one or more special appeals officers to conduct hearings and appeals as required pursuant to chapters 616A to 617, inclusive, of NRS. The Governor 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 decision of an appeals officer is the final and binding administrative ~~[determination of]~~ decision on a claim for compensation under 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.345 is hereby amended to read as follows:

616C.345 1. Any party aggrieved by a decision of the hearing officer relating to a claim for compensation may appeal from the decision by , except as otherwise provided in subsections 8 and 9, filing a notice of appeal with an appeals officer within 30 days after the date of the decision.

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

(a) The name of:

(1) The claimant;

(2) The employer; and

(3) The insurer or third-party administrator;

(b) The number of the claim; and

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

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

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

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

any party to the dispute may , except as otherwise provided in subsections 8 and 9, file a notice of appeal within 70 days after the date on which the final determination was mailed to the employee, or his dependent, or the unanswered request for resolution was submitted. Failure to render a written determination within 30 days after receipt of such a request shall be deemed by the appeals officer to be a denial of the request.

4. 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 a hearing officer or a determination rendered pursuant to NRS 616C.305. The appeals officer 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 officer after reviewing the application, the decision must be complied with within 10 days after the date of the refusal to grant a stay.

5. Except as otherwise provided in subsections 2 and 6, within 10 days after receiving a notice of appeal pursuant to this section or NRS 616C.220, 616D.140 or 617.401, or within 10 days after receiving a notice of a contested claim pursuant to subsection ~~6~~ 7 of NRS 616C.315, the appeals officer shall:

(a) Schedule a hearing on the merits of the appeal or contested claim for a date and time within 90 days after his receipt of the notice 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 appeals officer; and

(b) 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.

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

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

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

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

8. The period specified in subsection 1 or 3 within which a notice of appeal must be filed may be extended for an additional 90 days if the person aggrieved shows by a preponderance of the evidence that he was diagnosed with a terminal illness or was informed of the death or diagnosis of a terminal illness of his spouse, parent or child.

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

Sec. 11. 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~~ Order an independent medical examination and 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. ~~It~~ , whether or not the physician or chiropractor is on the insurer's panel of providers of health care. 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

1 616C.265 to pay to the appropriate person the charges of a provider of health care if
2 the conditions of NRS 616C.138 are satisfied.

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

7 7. The appeals officer shall render his decision:

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

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

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

15 ***Sec. 12. NRS 616C.410 is hereby amended to read as follows:***

16 616C.410 Except as otherwise provided by NRS 616C.380, 616C.495,
17 616C.505, 616C.580 and 616C.595, and section 1.2 of this act, the insurer shall not
18 make or allow any lump-sum settlements.

19 ***Sec. 13. NRS 616C.453 is hereby amended to read as follows:***

20 616C.453 1. If a claimant or a dependent of a claimant is entitled to receive
21 compensation pursuant to chapters 616A to 617, inclusive, of NRS for a permanent
22 total disability and the claimant or dependent is not entitled to an annual increase in
23 that compensation pursuant to NRS 616C.473, the claimant or dependent is entitled
24 to an annual payment for that permanent total disability in an amount determined
25 by the Administrator pursuant to subsection 3, but such annual payments may not
26 exceed \$1,200 per claimant or dependent. ~~[The]~~ Except as otherwise provided in
27 subsection 5, the total payments made pursuant to this section may not exceed
28 \$500,000 per year.

29 2. Each year, the Administrator shall withdraw from the Uninsured
30 Employers' Claim Account established pursuant to NRS 616A.430 an amount of
31 the income realized from the investment of the assets in the Account that is
32 necessary to fund the payments calculated pursuant to subsection 3.

33 3. The Administrator shall adopt regulations establishing a method for the
34 equitable distribution of the money withdrawn from the Account pursuant to
35 subsection 2. The regulations must provide for payments that result in the largest
36 proportional share of the money being paid to claimants and dependents who
37 receive the lowest amount of compensation pursuant to chapters 616A to 617,
38 inclusive, of NRS for the permanent total disability. The Administrator may adopt
39 any other regulations that are necessary to carry out the provisions of this section.

40 4. ~~[The]~~ Except as otherwise provided in subsection 5, the Administrator
41 shall make the payment required by this section to each claimant and dependent of
42 the claimant who is entitled to the payment not later than October 1 of each year.
43 Any payment received by the claimant or dependent of the claimant pursuant to this
44 section is in addition to any compensation to which the claimant or dependent of
45 the claimant is otherwise entitled by law.

46 5. The Administrator may make a payment from the Account to a claimant
47 or a dependent of a claimant that would have been payable in a prior year
48 pursuant to subsection 3 if the Administrator determines that the claimant or
49 dependent was entitled to the payment pursuant to subsection 1.

Sec. 14. NRS 616C.495 is hereby amended to read as follows:

616C.495 1. Except as otherwise provided in NRS 616C.380, an award for a permanent partial disability may be paid in a lump sum under the following conditions:

(a) A claimant injured on or after July 1, 1973, and before July 1, 1981, who incurs a disability that does not exceed 12 percent may elect to receive his compensation in a lump sum. A claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that does not exceed 25 percent may elect to receive his compensation in a lump sum.

(b) The spouse, or in the absence of a spouse, any dependent child of a deceased claimant injured on or after July 1, 1973, who is not entitled to compensation in accordance with NRS 616C.505, is entitled to a lump sum equal to the present value of the deceased claimant's undisbursed award for a permanent partial disability.

(c) Any claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that exceeds 25 percent may elect to receive his compensation in a lump sum equal to the present value of an award for a disability of 25 percent. If the claimant elects to receive compensation pursuant to this paragraph, the insurer shall pay in installments to the claimant that portion of the claimant's disability in excess of 25 percent.

(d) Any claimant injured on or after July 1, 1995, may elect to receive his compensation in a lump sum in accordance with regulations adopted by the Administrator and approved by the Governor. The Administrator shall adopt regulations for determining the eligibility of such a claimant to receive all or any portion of his compensation in a lump sum. Such regulations may include the manner in which an award for a permanent partial disability may be paid to such a claimant in installments. Notwithstanding the provisions of NRS 233B.070, any regulation adopted pursuant to this paragraph does not become effective unless it is first approved by the Governor.

2. If the claimant elects to receive his payment for a permanent partial disability in a lump sum pursuant to subsection 1, all of his benefits for compensation terminate. His acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting he waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability, except:

(a) His right to:

(1) Reopen his claim in accordance with the provisions of NRS 616C.390;

or

(2) Have his claim considered by his insurer pursuant to NRS 616C.392;

(b) Any counseling, training or other rehabilitative services provided by the insurer; and

(c) His right to receive a benefit penalty in accordance with NRS 616D.120.

➤ The claimant, when he demands his payment in a lump sum, must be ~~advised in writing of the provisions of this subsection when he demands his payment in a lump sum,~~ provided with a written notice which prominently displays a statement describing the effects of accepting payment in a lump sum of an entire permanent partial disability award, any portion of such an award or any uncontested portion of such an award, and that he has 20 days after the mailing or personal delivery of the notice within which to retract or reaffirm his demand, before payment may be made and his election becomes final.

3. Any lump-sum payment which has been paid on a claim incurred on or after July 1, 1973, must be supplemented if necessary to conform to the provisions of this section.

4. Except as otherwise provided in this subsection, the total lump-sum payment for disablement must not be less than one-half the product of the average monthly wage multiplied by the percentage of disability. If the claimant received compensation in installment payments for his permanent partial disability before electing to receive his payment for that disability in a lump sum, the lump-sum payment must be calculated for the remaining payment of compensation.

5. The lump sum payable must be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value must be calculated using monthly payments in the amounts prescribed in subsection 7 of NRS 616C.490 and actuarial annuity tables adopted by the Division. The tables must be reviewed annually by a consulting actuary.

6. If a claimant would receive more money by electing to receive compensation in a lump sum than he would if he receives installment payments, he may elect to receive the lump-sum payment.

Sec. 15. NRS 616C.505 is hereby amended to read as follows:

616C.505 If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit, and is payable as follows:

1. In addition to any other compensation payable pursuant to chapters 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount not to exceed \$5,000. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation must be borne by the insurer.

2. ~~For~~ *Except as otherwise provided in subsection 3, to* the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.

3. *If there is a surviving spouse and any surviving children of the deceased employee who are not the children of the surviving spouse, the compensation otherwise payable pursuant to subsection 2 must be paid as follows until the entitlement of all children of the deceased employee to receive compensation pursuant to this subsection ceases:*

(a) To the surviving spouse, 50 percent of the death benefit is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage; and

(b) To each child of the deceased employee, regardless of whether the child is the child of the surviving spouse, his proportionate share of 50 percent of the death benefit and, except as otherwise provided in subsection 12, if the child has a guardian, the compensation he is entitled to receive may be paid to the guardian.

4. In the event of the subsequent death of the surviving spouse:

(a) Each surviving child of the deceased employee *in addition to any amount the child may be entitled to pursuant to subsection 3,* must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and it is payable until the youngest child reaches the age of 18 years.

(b) Except as otherwise provided in subsection ~~11~~ 12, if the children have a guardian, the compensation they are entitled to receive may be paid to the guardian.

~~11~~ 5. Upon the remarriage of a surviving spouse with children:

(a) The surviving spouse must be paid 2 years' compensation in one lump sum and further benefits must cease; and

(b) Each child must be paid 15 percent of the average monthly wage, up to a maximum family benefit of 66 2/3 percent of the average monthly wage.

~~(5-)~~ 6. If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each such child is entitled to his proportionate share of 66 2/3 percent of the average monthly wage for his support.

~~(6-)~~ 7. Except as otherwise provided in subsection ~~(7-)~~ 8., if there is no surviving spouse or child under the age of 18 years, there must be paid:

(a) To a parent, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, 33 1/3 percent of the average monthly wage.

(b) To both parents, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, 66 2/3 percent of the average monthly wage.

(c) To each brother or sister until he or she reaches the age of 18 years, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, his proportionate share of 66 2/3 percent of the average monthly wage.

~~(7-)~~ 8. The aggregate compensation payable pursuant to subsection ~~(6-)~~ 7 must not exceed 66 2/3 percent of the average monthly wage.

~~(8-)~~ 9. In all other cases involving a question of total or partial dependency:
(a) The extent of the dependency must be determined in accordance with the facts existing at the time of the injury.

(b) If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid must be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the deceased employee to the partial dependents bears to the average monthly wage of the deceased employee at the time of the injury resulting in his death.

(c) The duration of compensation to partial dependents must be fixed in accordance with the facts shown, but may not exceed compensation for 100 months.

~~(9-)~~ 10. Compensation payable to a surviving spouse is for the use and benefit of the surviving spouse and the dependent children, and the insurer may, from time to time, apportion such compensation between them in such a way as it deems best for the interest of all dependents.

~~(10-)~~ 11. In the event of the death of any dependent specified in this section before the expiration of the time during which compensation is payable to him, funeral expenses are payable in an amount not to exceed \$5,000.

~~(11-)~~ 12. If a dependent is entitled to receive a death benefit pursuant to this section and is less than 18 years of age or incompetent, the legal representative of the dependent shall petition for a guardian to be appointed for that dependent pursuant to NRS 159.044. An insurer shall not pay any compensation in excess of \$3,000, other than burial expenses, to the dependent until a guardian is appointed and legally qualified. Upon receipt of a certified letter of guardianship, the insurer shall make all payments required by this section to the guardian of the dependent until the dependent is emancipated, the guardianship terminates or the dependent reaches the age of 18 years, whichever occurs first, unless paragraph (a) of subsection ~~(12-)~~ 13 is applicable. The fees and costs related to the guardianship must be paid from the estate of the dependent. A guardianship established pursuant to this subsection must be administered in accordance with chapter 159 of NRS,

except that after the first annual review required pursuant to NRS 159.176, a court may elect not to review the guardianship annually. The court shall review the guardianship at least once every 3 years. As used in this subsection, "incompetent" has the meaning ascribed to it in NRS 159.019.

~~[12.]~~ 13. Except as otherwise provided in paragraphs (a) and (b), the entitlement of any child to receive his proportionate share of compensation pursuant to this section ceases when he dies, marries or reaches the age of 18 years. A child is entitled to continue to receive compensation pursuant to this section if he is:

(a) Over 18 years of age and incapable of supporting himself, until such time as he becomes capable of supporting himself; or

(b) Over 18 years of age and enrolled as a full-time student in an accredited vocational or educational institution, until he reaches the age of 22 years.

~~[13.]~~ 14. As used in this section, "surviving spouse" means a surviving husband or wife who was married to the employee at the time of the employee's death.

Sec. 16. NRS 616C.560 is hereby amended to read as follows:

616C.560 1. A program for vocational rehabilitation developed pursuant to subsection 3 of NRS 616C.555 may be extended:

(a) Without condition or limitation, by the insurer at his sole discretion; or

(b) In accordance with this section if:

(1) The injured employee makes a written request to extend the program ~~[within]~~ not later than 30 days after ~~he receives written notification that he is eligible~~ the program for vocational rehabilitation services ~~[+] has been completed;~~ and

(2) There are exceptional circumstances which make it unlikely that the injured employee will obtain suitable gainful employment as a result of vocational rehabilitation which is limited to the period for which he is eligible.

➤ An insurer's determination to grant or deny an extension pursuant to paragraph (a) may not be appealed.

2. If an injured employee has incurred a permanent physical impairment of less than 11 percent:

(a) The total length of the program, including any extension, must not exceed 2 years.

(b) "Exceptional circumstances" shall be deemed to exist for the purposes of paragraph (b) of subsection 1, if:

(1) The injured employee lacks work experience, training, education or other transferable skills for an occupation which he is physically capable of performing; or

(2) Severe physical restrictions as a result of the industrial injury have been imposed by a physician which significantly limit the employee's occupational opportunities.

3. If an injured employee has incurred a permanent physical impairment of 11 percent or more:

(a) The total length of the program, including any extension, must not exceed 2 1/2 years.

(b) "Exceptional circumstances" shall be deemed to exist for the purposes of paragraph (b) of subsection 1, if the injured employee has suffered:

(1) The total and permanent loss of sight of both eyes;

(2) The loss by separation of a leg at or above the knee;

(3) The loss by separation of a hand at or above the wrist;

(4) An injury to the head or spine which results in permanent and complete paralysis of both legs, both arms or a leg and an arm;

(5) An injury to the head which results in a severe cognitive functional impairment which may be established by a nationally recognized form of objective psychological testing;

(6) The loss by separation of an arm at or above the elbow and the loss by separation of a leg at or above the knee;

(7) An injury consisting of second or third degree burns on 50 percent or more of the body, both hands or the face;

(8) A total bilateral loss of hearing;

(9) The total loss or significant and permanent impairment of speech; or

(10) A permanent physical impairment of 50 percent or more determined pursuant to NRS 616C.490, if the severity of the impairment limits the injured employee's gainful employment to vocations that are primarily intellectual and require a longer program of education.

4. The insurer shall deliver a copy of its decision granting or denying an extension to the injured employee and the employer. Except as otherwise provided in this section, the decision shall be deemed to be a final determination of the insurer for the purposes of NRS 616C.315.

Sec. 17. NRS 616C.580 is hereby amended to read as follows:

616C.580 1. Except as otherwise provided in this section, vocational rehabilitation services must not be provided outside of this State.

2. An injured employee who:

(a) Resides outside of this State, within 50 miles from any border of this State, on the date of injury; or

(b) Was injured while temporarily employed in this State by an employer subject to the provisions of chapters 616A to 617, inclusive, of NRS who can demonstrate that, on the date of injury, his permanent residence was outside of this State,

may receive vocational rehabilitation services at a location within 50 miles from his residence if such services are available at such a location.

3. An injured employee who:

(a) Is eligible for vocational rehabilitation services pursuant to NRS 616C.590; and

(b) Resides outside of this State but does not qualify to receive vocational rehabilitation services outside of this State pursuant to subsection 2,

may execute a written agreement with the insurer which provides for the payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services pursuant to NRS 616C.595. The amount of the lump sum must not exceed \$20,000.

4. An injured employee who resides outside of this State but does not qualify to receive vocational rehabilitation services outside of this State pursuant to subsection 2 may receive the vocational rehabilitation services to which he is entitled pursuant to NRS 616C.545 to 616C.575, inclusive, and 616C.590 if he relocates to:

(a) This State; or

(b) A location within 50 miles from any border of this State, at his own expense, if such services are available at such a location.

5. An injured employee who resides in this State may receive vocational rehabilitation services outside of this State at a location within 50 miles from his residence if such services are available at such a location. An insurer may not

unreasonably deny a request made by an injured employee pursuant to this subsection to receive vocational rehabilitation services outside of this State.

6. An injured employee may receive vocational rehabilitation services in any state that borders this State if the injured employee demonstrates that the services are available in a more cost effective manner than are available in this State. Any vocational rehabilitation services provided pursuant to this subsection must be monitored by a vocational rehabilitation counselor in this State.

Sec. 18. NRS 616C.595 is hereby amended to read as follows:

616C.595 1. If an injured employee is eligible for vocational rehabilitation services pursuant to NRS 616C.590, the insurer and the injured employee may, at any time during the employee's eligibility for such services, execute a written agreement providing for the payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services. An insurer's refusal to execute such an agreement may not be appealed.

2. If the insurer and the injured employee execute an agreement pursuant to subsection 1, the acceptance of the payment of compensation in a lump sum by the injured employee extinguishes his right to receive vocational rehabilitation services under his claim. Except as otherwise required by federal law, an injured employee shall not receive vocational rehabilitation services from any state agency after he accepts payment of compensation in a lump sum pursuant to this section.

3. Before executing an agreement pursuant to subsection 1, an insurer shall:

(a) Order an assessment of and counseling concerning the vocational skills of the injured employee, unless the provisions of subsection 3 of NRS 616C.580 are applicable;

(b) Consult with the employer of the injured employee; and

(c) Provide a written notice to the injured employee that contains the following statements:

(1) That the injured employee is urged to seek assistance and advice from the Nevada Attorney for Injured Workers or to consult with a private attorney before signing the agreement.

(2) That the injured employee may rescind the agreement within 20 days after he signs it.

(3) That the 20-day period pursuant to subparagraph (2) may not be waived.

(4) That acceptance by the injured employee of payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services extinguishes his right to receive such services.

4. Except as otherwise provided in NRS 616C.580, any payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services must not be less than 40 percent of the maximum amount of vocational rehabilitation maintenance due to the injured employee pursuant to NRS 616C.555.

5. No payment of compensation in a lump sum may be made pursuant to this section until the 20-day period provided for the rescission of the agreement has expired.

Sec. 19. 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) Induced a claimant to fail to report an accidental injury or occupational disease;

(b) Without justification, persuaded a claimant to:

- 1 (1) Settle for an amount which is less than reasonable;
- 2 (2) Settle for an amount which is less than reasonable while a hearing or an
- 3 appeal is pending; or
- 4 (3) Accept less than the compensation found to be due him by a hearing
- 5 officer, appeals officer, court of competent jurisdiction, written settlement
- 6 agreement, written stipulation or the Division when carrying out its duties pursuant
- 7 to chapters 616A to 617, inclusive, of NRS;
- 8 (c) Refused to pay or unreasonably delayed payment to a claimant of
- 9 compensation or other relief found to be due him by a hearing officer, appeals
- 10 officer, court of competent jurisdiction, written settlement agreement, written
- 11 stipulation or the Division when carrying out its duties pursuant to chapters 616A to
- 12 616D, inclusive, or chapter 617 of NRS, if the refusal or delay occurs:
- 13 (1) Later than 10 days after the date of the settlement agreement or
- 14 stipulation;
- 15 (2) Later than 30 days after the date of the decision of a court, hearing
- 16 officer, appeals officer or the Division, unless a stay has been granted; or
- 17 (3) Later than 10 days after a stay of the decision of a court, hearing
- 18 officer, appeals officer or the Division has been lifted;
- 19 (d) Refused to process a claim for compensation pursuant to chapters 616A to
- 20 616D, inclusive, or chapter 617 of NRS;
- 21 (e) Made it necessary for a claimant to initiate proceedings pursuant to chapters
- 22 616A to 616D, inclusive, or chapter 617 of NRS for compensation or other relief
- 23 found to be due him by a hearing officer, appeals officer, court of competent
- 24 jurisdiction, written settlement agreement, written stipulation or the Division when
- 25 carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617
- 26 of NRS;
- 27 (f) Failed to comply with the Division's regulations covering the payment of an
- 28 assessment relating to the funding of costs of administration of chapters 616A to
- 29 617, inclusive, of NRS;
- 30 (g) Failed to provide or unreasonably delayed payment to an injured employee
- 31 or reimbursement to an insurer pursuant to NRS 616C.165; or
- 32 (h) Intentionally failed to comply with any provision of, or regulation adopted
- 33 pursuant to, this chapter or chapter 616A, 616B, 616C or 617 of NRS,
- 34 ➤ the Administrator shall impose an administrative fine of \$1,500 for each initial
- 35 violation, or a fine of \$15,000 for a second or subsequent violation.
- 36 2. Except as otherwise provided in chapters 616A to 616D, inclusive, or
- 37 chapter 617 of NRS, if the Administrator determines that an insurer, organization
- 38 for managed care, health care provider, third-party administrator or employer has
- 39 failed to comply with any provision of this chapter or chapter 616A, 616B, 616C or
- 40 617 of NRS, or any regulation adopted pursuant thereto, the Administrator may
- 41 take any of the following actions:
- 42 (a) Issue a notice of correction for:
- 43 (1) A minor violation, as defined by regulations adopted by the Division;
- 44 or
- 45 (2) A violation involving the payment of compensation in an amount
- 46 which is greater than that required by any provision of this chapter or chapter 616A,
- 47 616B, 616C or 617 of NRS, or any regulation adopted pursuant thereto.
- 48 ➤ The notice of correction must set forth with particularity the violation committed
- 49 and the manner in which the violation may be corrected. The provisions of this
- 50 section do not authorize the Administrator to modify or negate in any manner a
- 51 determination or any portion of a determination made by a hearing officer, appeals

officer 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 must not be greater than \$375 for an initial violation, or more than \$1,500 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 (e), inclusive, or (h) 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:

(a) Except as otherwise provided in paragraph (b), in an amount that is not less than \$5,000 and not greater than \$37,500; or

(b) Of \$3,000 if the violation involves a late payment of compensation or other relief to a claimant in an amount which is less than \$500 or which is not more than 14 days late.

4. To determine the amount of the benefit penalty, the Administrator shall consider the degree of physical harm suffered by the injured employee or his dependents as a result of the violation of paragraph (a), (b), (c), (d), (e) or (h) of subsection 1, the amount of compensation found to be due the claimant and the number of fines and benefit penalties, other than a benefit penalty described in paragraph (b) of subsection 3, previously imposed against the insurer, organization for managed care, health care provider, third-party administrator or employer pursuant to this section. If this is the third violation within 5 years for which a benefit penalty, other than a benefit penalty described in paragraph (b) of subsection 3, has been imposed against the insurer, organization for managed care, health care provider, third-party administrator or employer, the Administrator shall also consider the degree of economic harm suffered by the injured employee or his dependents as a result of the violation of paragraph (a), (b), (c), (d), (e) or (h) of subsection 1. Except as otherwise provided in this section, 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. If the claimant is the injured employee and he dies before the benefit penalty is paid to him, the benefit penalty must be paid to his estate. 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.

~~4.5.~~ 5. 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 or premiums received that are used to calculate an assessment, an administrative penalty of up to twice the amount of any underpaid assessment.

~~5.6.~~ 6. 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 of the Office of the Attorney General 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 \$15,000.

~~[6.]~~ 7. 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.]~~ 8. 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.

9. If the Administrator determines that a vocational rehabilitation counselor has violated the provisions of section 1.3 of this act, the Administrator may impose an administrative fine on the vocational rehabilitation counselor of not more than \$250 for a first violation, \$500 for a second violation and \$1,000 for a third or subsequent violation.

~~[Sec. 3.]~~ Sec. 20. NRS 617.356 is hereby amended to read as follows:

617.356 1. An insurer shall accept or deny ~~[responsibility]~~ a claim for compensation under this chapter and notify the claimant or the person acting on behalf of the claimant pursuant to NRS 617.344 that the claim has been accepted or denied within 30 working days after ~~[claims]~~ the forms for filing the claim for compensation are received pursuant to both NRS 617.344 and 617.352.

2. The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 by:

(a) Mailing its written determination to the claimant or the person acting on behalf of the claimant; and

(b) If the claim has been denied, in whole or in part, obtaining a certificate of mailing.

3. The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection 2 shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.

4. Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.

5. For the purposes of this section, the insurer shall mail the written determination to:

(a) The mailing address of the claimant or the person acting on behalf of the claimant that is provided on the form prescribed by the Administrator for filing the claim; or

(b) Another mailing address if the claimant or the person acting on behalf of the claimant provides to the insurer written notice of another mailing address.

1 ***6. As used in this section, "certificate of mailing" means a receipt that***
2 ***provides evidence of the date on which the insurer presented its written***
3 ***determination to the United States Postal Service for mailing.***

4 ~~[Sec. 4.]~~ **Sec. 21.** NRS 617.440 is hereby amended to read as follows:

5 617.440 1. An occupational disease defined in this chapter shall be deemed
6 to arise out of and in the course of the employment if:

7 (a) There is a direct causal connection between the conditions under which the
8 work is performed and the occupational disease;

9 (b) It can be seen to have followed as a natural incident of the work as a result
10 of the exposure occasioned by the nature of the employment;

11 (c) It can be fairly traced to the employment as the proximate cause; and

12 (d) It does not come from a hazard to which workmen would have been equally
13 exposed outside of the employment.

14 2. The disease must be incidental to the character of the business and not
15 independent of the relation of the employer and employee.

16 3. The disease need not have been foreseen or expected, but after its
17 contraction must appear to have had its origin in a risk connected with the
18 employment, and to have flowed from that source as a natural consequence.

19 4. In cases of disability resulting from radium poisoning or exposure to
20 radioactive properties or substances, or to roentgen rays (X rays) or ionizing
21 radiation, the poisoning or illness resulting in disability must have been contracted
22 in the State of Nevada.

23 ***5. The requirements set forth in this section do not apply to claims filed***
24 ***pursuant to NRS 617.453, 617.455, 617.457, 617.485 or 617.487.***

25 **Sec. 22. With respect to the regulations required to be adopted pursuant**
26 **to NRS 616C.295, as amended by section 6 of this act, the Chief of the**
27 **Hearings Division of the Department of Administration shall:**

28 **1. Hold the first workshop concerning the regulations on or before**
29 **December 31, 2007; and**

30 **2. Adopt the regulations on or before June 30, 2008.**

31 ~~[Sec. 5.]~~ **Sec. 23.** This act becomes effective on July 1, 2007.