

## Amendment No. 406

Senate Amendment to Senate Bill No. 21 (BDR 53-479)

**Proposed by:** Senate Committee on Commerce, Labor and Energy**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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 underlining* is newly added transitory language.

MSN/TMC



Date: 4/18/2011

S.B. No. 21—Revises the requirements for reopening a claim of compensation for a permanent partial disability. (BDR 53-479)



SENATE BILL NO. 21—COMMITTEE ON  
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE NEVADA ATTORNEY FOR INJURED WORKERS)

PREFILED DECEMBER 13, 2010

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises ~~the requirements for reopening a claim of compensation for a permanent partial disability;~~ certain provisions concerning catastrophic injuries; (BDR 53-479)

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

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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; revising ~~the requirements for reopening a claim of compensation for a permanent partial disability;~~ certain provisions concerning catastrophic injuries; specifying additional injuries that constitute a catastrophic injury; revising the qualifications of a certified vocational rehabilitation counselor; revising provisions governing claims for catastrophic injuries; revising the requirements of a life care plan developed by an insurer for an injured employee; revising the qualifications of an adjuster who administers a claim for a catastrophic injury; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

~~Existing law requires an insurer to reopen a claim of compensation for a permanent partial disability if the claimant proves three conditions are met: (1) the claim was closed and the claimant was not evaluated as required; (2) at the time of closing, the claimant met the qualifications for an evaluation; and (3) the insurer violated NRS 616D.120 with regard to the claim. (NRS 616C.392) NRS 616D.120 lists prohibited acts for which the Administrator of the Division of Industrial Relations of the Department of Business and Industry may seek penalties from an insurer, such as failure to pay, inducing a claimant to settle, refusing to process a claim, or intentionally failing to follow a statute or regulation, but does not refer to evaluations for a permanent partial disability.~~

~~— This bill removes the third condition concerning a violation of NRS 616D.120, so a claimant, in order to reopen a claim, would be required to show that at the time his or her case was closed he or she was qualified to receive an evaluation and no evaluation was scheduled.]~~  
Section 1.1 of this bill expands the definition of “catastrophic injury” for the purposes of industrial insurance to include an injury sustained from an accident and resulting in: (1) a coma or vegetative state; (2) the loss or significant impairment of function of one or more vital internal organs or organ systems; (3) the mangled, crushing or amputation of a major portion of an extremity; (4) an injury which the insurer and the injured

employee agree should be administered as a catastrophic injury; or (5) an injury determined by the insurer to be a catastrophic injury.

Section 1.2 of this bill revises the qualifications for certification as a certified vocational rehabilitation counselor. Section 1.7 of this bill revises the qualifications for an adjuster who administers a claim for a catastrophic injury.

Section 1.4 of this bill provides that an injured employee may submit a request to an insurer for a determination that an injury should be administered as a claim for a catastrophic injury. Section 1.4 further provides that an insurer must issue a written determination concerning such a request within 30 days after receipt of the request. Section 1.5 of this bill provides that an injury which is not originally determined to be a catastrophic injury may at any time be classified as a catastrophic injury if a change in the nature of the injury brings it within the definition of "catastrophic injury."

Under existing law, an insurer is required to develop a life care plan for an injured employee who suffers a catastrophic injury within 90 days after the insurer accepts the injured employee's claim. (NRS 616C.700) Section 1.6 of this bill requires the insurer to develop a life care plan within 120 days after the treating physician determines that the injured employee's injury has stabilized and that the injured employee requires a life care plan. Section 1.6 also sets forth specific requirements for the development and implementation of the life care plan.

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

**Section 1.** ~~[NRS 616C.392 is hereby amended to read as follows:~~

~~616C.392 1. An insurer shall reopen a claim to consider the payment of compensation for a permanent partial disability if:~~

~~(a) The claim was closed and the claimant was not scheduled for an evaluation of the injury in accordance with NRS 616C.490; and~~

~~(b) The claimant demonstrates by a preponderance of the evidence that, at the time that the case was closed, the claimant was, because of the injury, qualified to be scheduled for an evaluation for a permanent partial disability. [; and~~

~~(c) The insurer has violated a provision of NRS 616D.120 with regard to the claim.]~~

~~2. The demonstration required pursuant to paragraph (b) of subsection 1 must be made with documentation that existed at the time that the case was closed.~~

~~3. Notwithstanding any specific statutory provision to the contrary, the consideration of whether a claimant is entitled to payment of compensation for a permanent partial disability for a claim that is reopened pursuant to this section must be made in accordance with the provisions of the applicable statutory and regulatory provisions that existed on the date on which the claim was closed, including, without limitation, using the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted by the Division pursuant to NRS 616C.110 that was applicable on the date the claim was closed.] (Deleted by amendment.)~~

**Sec. 1.1.** NRS 616A.077 is hereby amended to read as follows:

616A.077 "Catastrophic injury" means an injury sustained from an accident and resulting in:

1. The total loss of sight in one or both eyes;
2. The total loss of hearing in one or both ears;
3. The loss by separation of any arm or leg;
4. An injury to the head or spine which results in paralysis of the legs, the arms or both the legs and arms;

5. An injury to the head which results in severe cognitive impairment, as determined by a nationally recognized method of objective psychological testing;

6. An injury consisting of second or third degree burns on 50 percent or more of:

- (a) The body;
- (b) Both hands; or
- (c) The face;

7. The total loss of or significant and permanent impairment of speech; ~~for~~

8. A coma or vegetative state;

9. The loss or significant impairment of function of one or more vital internal organs or organ systems;

10. The mangling, crushing or amputation of a major portion of an extremity;

11. An injury which the insurer and the injured employee agree should be administered as a claim for a catastrophic injury;

12. An injury determined to be a catastrophic injury pursuant to section 1.4 of this act; or

13. Any other category of injury deemed to be catastrophic as determined by the Administrator.

**Sec. 1.2. NRS 616A.080 is hereby amended to read as follows:**

616A.080 "Certified vocational rehabilitation counselor" means a person who:

1. Has a master's degree in rehabilitation counseling; ~~for~~

2. Has been certified as a rehabilitation counselor ~~for an insurance rehabilitation specialist~~ by the Commission on Rehabilitation Counselor Certification ~~for which is a division of the Board for Rehabilitation Certification~~; or

3. Has been certified as an insurance rehabilitation specialist by the Certification of Disability Management Specialists Commission.

**Sec. 1.3. Chapter 616C of NRS is hereby amended by adding thereto the provisions set forth as sections 1.4 and 1.5 of this act.**

**Sec. 1.4. 1. An injured employee may submit to an insurer a written request for a determination that his or her injury should be administered as a claim for a catastrophic injury.**

**2. If an employee submits a written request to an insurer pursuant to subsection 1, the insurer shall issue a written determination concerning the request not later than 30 days after receipt of the request.**

**Sec. 1.5. An insurer that did not originally accept a claim as a claim for a catastrophic injury shall designate the claim as a claim for a catastrophic injury if at any time after the claim is accepted the injury satisfies the requirements for a catastrophic injury.**

**Sec. 1.6. NRS 616C.700 is hereby amended to read as follows:**

616C.700 1. Notwithstanding any other provision of this chapter, if an insurer accepts a claim for a catastrophic injury, the insurer shall:

(a) As soon as reasonably practicable after the date of acceptance of the claim, assign the claim to a qualified adjuster, nurse and vocational rehabilitation counselor; ~~and~~

(b) Within ~~90~~ 120 days after the date ~~of acceptance of the claim,~~ on which the treating physician determines that the condition of the injured employee has stabilized and that the injured employee requires a life care plan, develop a life care plan in consultation with the adjuster, nurse and vocational rehabilitation counselor assigned to the claim pursuant to paragraph ~~(a)~~ (a); and

(c) Pay benefits and provide the proper medical services to the injured employee during the entire period of the development and implementation of the life care plan.

2. A life care plan which is developed pursuant to subsection 1 must ensure the prompt, efficient and proper provision of medical services to the injured employee.

~~3. [The Administrator shall adopt regulations to carry out the provisions of this section, including, without limitation, regulations prescribing:~~

~~(a) The form and content of a life care plan; and~~

~~(b) The frequency and method of communication by which the insurer shall contact the injured employee or the family members or representative of the injured employee.]~~

In developing a life care plan for an injured employee, the insurer, in consultation with the adjuster, nurse and vocational rehabilitation counselor assigned to the claim pursuant to paragraph (a) of subsection 1, shall assess the following:

(a) The number of home or hospital visits determined to be necessary or appropriate by the registered nurse and vocational rehabilitation counselor;

(b) The life expectancy of the injured employee;

(c) The medical needs of the injured employee, including, without limitation:

(1) Surgery;

(2) Prescription medication;

(3) Physical therapy; and

(4) Maintenance therapy;

(d) The effect, if any, of any preexisting medical condition; and

(e) The potential of the injured employee for rehabilitation, taking into account:

(1) The injured employee's medical condition, age, educational level, work experience and motivation; and

(2) Any other relevant factors.

4. A life care plan developed pursuant to paragraph (b) of subsection 1 must include, without limitation, a schedule for the adjuster, nurse and vocational rehabilitation counselor assigned to the claim pursuant to paragraph (a) of subsection 1 to meet or communicate with the injured employee, if practicable, and the treating physician to determine the need for, without limitation:

(a) Special medical attention or treatment;

(b) Psychological counseling or testing; and

(c) Any medical device, including, without limitation:

(1) A wheelchair;

(2) A prosthesis; and

(3) A specially equipped or designed motor vehicle.

5. A life care plan developed pursuant to paragraph (b) of subsection 1 must include a plan of action for treatment or vocational rehabilitation of the injured employee or consideration of the possible permanent total disability of the injured employee.

6. In addition to any claim determination affecting the rights of an injured employee under his or her claim, or responses to requests on behalf of the injured employee for specific action or information on the claim or any other contact that may occur, an insurer shall:

(a) Schedule a personal meeting concerning the status of the claim to take place at least once per calendar month between the adjuster assigned to the claim pursuant to paragraph (a) of subsection 1 and the injured employee or a family member or designated representative of the injured employee; or

(b) If a personal meeting described in paragraph (a) is not practicable, provide a written report concerning the status of the claim and soliciting requests and information at least once per calendar month to the injured employee or a family member or designated representative of the injured employee. The report must be mailed to the injured employee or a family member or designated representative of the injured employee by first-class mail.

7. Except as otherwise provided in this subsection, a life care plan developed pursuant to paragraph (b) of subsection 1 must be based on the condition of the injured employee at the time the life care plan is established. If there is a substantial or significant change in the condition or prognosis of the injured employee, the insurer shall amend the life care plan to reflect the change in the condition or prognosis of the injured employee.

Sec. 1.7. NRS 616C.720 is hereby amended to read as follows:

616C.720 ~~1.1~~ An adjuster who administers a claim for a catastrophic injury must be competent and qualified to administer such a claim.

~~2. The Administrator shall adopt regulations establishing qualifications for an adjuster to administer a claim for a catastrophic injury.~~

1. Have at least 4 years of experience in adjusting workers' compensation claims for lost time; or

2. Have at least 2 years of experience in adjusting workers' compensation claims for lost time and work under the direct supervision of an adjuster who has at least 4 years of experience in adjusting such claims.

Sec. 2. This act becomes effective upon passage and approval.