

SENATE BILL NO. 231—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 9, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to workers' compensation. (BDR 53-986)

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

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

AN ACT relating to workers' compensation; limiting the amount certain providers of health care can charge an insurer for providing prescription drugs to an injured employee; revising provisions related to the time that an insurer has to pay a bill submitted by a provider of health care; revising provisions relating to injured employees who were injured while intoxicated or under the influence of a controlled or prohibited substance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill revises various provisions of the Nevada Industrial Insurance Act which provides for the payment of compensation to employees who are injured or disabled as a result of an occupational injury or disease. (Chapters 616A-616D of NRS)

Section 1 of this bill sets forth that a provider of health care (not including a pharmacist) who prescribes and dispenses a drug to an injured employee may not charge an insurer more than 110 percent of the average wholesale price of the prescribed drug based on the original manufacturer's National Drug Code for the drug. In addition, the provider of health care must include the original manufacturer's National Drug Code for the drug on all bills and reports submitted to the insurer and may not charge or seek reimbursement for more than an initial 15-day supply of the drug. **Section 1** also provides that an insurer that provides coverage for prescription drugs must provide coverage for any drug: (1) prescribed for a covered indication that is approved by the United States Food and Drug Administration for the indication; (2) recognized in a standard reference compendia for treatment of the indication; or (3) is substantially accepted for treatment for the indication in peer-reviewed medical literature.



* S B 2 3 1 *

Existing law provides a two-step process for an insurer to pay a bill submitted by a provider of health care. First, the insurer must approve or deny the bill within 30 days of receipt. Second, if the insurer approves the bill, they must pay the bill within 30 days of the approval. (NRS 616C.136) **Section 2** of this bill consolidates these two steps and requires that an insurer pay or deny a bill within 45 days of receipt.

Existing law provides that compensation is not payable to an employee whose injury is proximately caused by the employee's intoxication or use of a controlled substance. Existing law also provides a rebuttable presumption that an employee's intoxication or use of a controlled substance at the time of the injury is the proximate cause of the injury. (NRS 616C.230) **Section 3** of this bill revises these provisions by removing the rebuttable presumption and replacing it with a requirement that the employee not receive compensation whenever an injury occurs to the employee while the employee is intoxicated or under the influence of a controlled or prohibited substance. Further, **section 3** provides that the employee is intoxicated or under the influence of a controlled or prohibited substance for the purposes of not receiving compensation whenever the employee meets or exceeds the limits for intoxication or use of a controlled or prohibited substance as set forth in NRS 484C.110, which prescribes such limits in the context of driving under the influence. In addition, **section 3** provides that the results of any alcohol or drug test performed as a result of an injury must be made available to an insurer or employer upon request.

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

Section 1. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. With respect to drugs prescribed and dispensed directly to an injured employee by a provider of health care:

(a) The provider of health care shall not charge an insurer, or seek reimbursement for, more than 110 percent of the average wholesale price for a prescription drug, calculated on a per unit basis, as of the date of dispensing the prescription drug to the injured employee.

(b) The provider of health care shall not charge an insurer, or seek reimbursement for, an initial supply of a prescription drug which exceeds the quantity necessary to treat an injured employee for 15 days, as measured from the date of first treatment of the injured employee, or which is charged or reimbursed at a rate higher than that allowed in accordance with this section.

(c) The provider of health care shall include the original manufacturer's National Drug Code, as assigned by the United States Food and Drug Administration, on all bills and reports submitted to an insurer pursuant to this chapter.

(d) A repackaged National Drug Code must not be used and must not be considered an original manufacturer's National Drug Code for the purposes of this section. If a provider of health care



1 *does not include the original manufacturer's National Drug Code*
2 *on a bill or report submitted to an insurer pursuant to this chapter,*
3 *the provider of health care is only entitled to receive as payment*
4 *from an insurer a maximum of 110 percent of the average*
5 *wholesale price of the least expensive, clinically equivalent*
6 *prescription drug, calculated on a per unit basis.*

7 *(e) A provider of health care who provides care on an*
8 *outpatient basis may not charge an insurer or seek reimbursement*
9 *for dispensing a nonprescription drug to an injured employee.*

10 2. *An insurer who provides coverage for prescription drugs*
11 *shall provide coverage for any drug prescribed to treat a covered*
12 *medical condition if the drug:*

13 *(a) Has been approved by the United States Food and Drug*
14 *Administration for the treatment of at least one medical condition;*

15 *(b) Is recognized in a standard reference compendia for*
16 *treatment of the covered medical condition; or*

17 *(c) Is substantially accepted for treatment of the covered*
18 *medical condition in peer-reviewed medical literature.*

19 3. *A provider of health care who is a practitioner who is*
20 *registered with the State Board of Pharmacy shall report to the*
21 *State Board of Pharmacy and the Investigation Division of the*
22 *Department of Public Safety, using the computerized program*
23 *established pursuant to NRS 453.1545, all prescription drugs, in*
24 *excess of a 15-day supply, that are prescribed or dispensed to an*
25 *injured employee and that are listed as schedule II or III*
26 *controlled substances pursuant to the United States Controlled*
27 *Substances Act, 21 U.S.C. § 812.*

28 4. *As used in this section:*

29 *(a) "Average wholesale price" means the price at which a*
30 *wholesaler sells a drug to a physician, pharmacy or other*
31 *customer and which is commonly reported by commercial*
32 *publishers of drug pricing data.*

33 *(b) "Clinically equivalent prescription drug" means a drug*
34 *that, when administered in similar dosages, provides a*
35 *substantially similar therapeutic effect for the control of a*
36 *symptom or disease.*

37 *(c) "Provider of health care" has the meaning ascribed to it in*
38 *NRS 629.031, but does not include a pharmacist.*

39 **Sec. 2.** NRS 616C.136 is hereby amended to read as follows:

40 616C.136 1. Except as otherwise provided in this section, an
41 insurer shall ~~approve or deny a bill for accident benefits received~~
42 ~~from a provider of health care within 30 calendar days after the~~
43 ~~insurer receives the bill. If the bill for accident benefits is approved,~~
44 ~~the insurer shall~~ pay ~~[the]~~ or deny a bill for accident benefits
45 received from a provider of health care within ~~[30]~~ 45 calendar



1 days after ~~{it is approved.}~~ *the insurer or third-party administrator*
2 *receives the bill.* Except as otherwise provided in this section, if the
3 ~~{approved}~~ bill for accident benefits is not paid within that period,
4 the insurer shall pay interest to the provider of health care at a rate
5 of interest equal to the prime rate at the largest bank in Nevada, as
6 ascertained by the Commissioner of Financial Institutions, on
7 January 1 or July 1, as the case may be, immediately preceding the
8 date on which the payment was due, plus 6 percent. The interest
9 must be calculated from ~~{30}~~ *45* calendar days after the date on
10 which the bill is ~~{approved}~~ *received* until the date on which the bill
11 is paid.

12 2. If an insurer needs additional information to determine
13 whether to ~~{approve}~~ *pay* or deny a bill for accident benefits
14 received from a provider of health care, the insurer shall notify the
15 provider of health care of his or her request for the additional
16 information within 20 calendar days after the insurer receives the
17 bill. The insurer shall notify the provider of health care of
18 all the specific reasons for the delay in ~~{approving}~~ *paying* or
19 denying the bill for accident benefits. Upon the receipt of such a
20 request, the provider of health care shall furnish the additional
21 information to the insurer within 20 calendar days after receiving
22 the request. If the provider of health care fails to furnish the
23 additional information within that period, the provider of health care
24 is not entitled to the payment of interest to which the provider of
25 health care would otherwise be entitled for the late payment of the
26 bill for accident benefits. The insurer shall ~~{approve}~~ *pay* or deny
27 the bill for accident benefits within 20 calendar days after the
28 insurer receives the additional information. ~~{If the bill for accident~~
29 ~~benefits is approved, the insurer shall pay the bill within 20 calendar~~
30 ~~days after the insurer receives the additional information.}~~ Except as
31 otherwise provided in this subsection, if the ~~{approved}~~ bill for
32 accident benefits is not paid within that period, the insurer shall pay
33 interest to the provider of health care at the rate set forth in
34 subsection 1. The interest must be calculated from 20 calendar days
35 after the date on which the insurer receives the additional
36 information until the date on which the bill is paid.

37 3. An insurer shall not request a provider of health care to
38 resubmit information that the provider of health care has previously
39 provided to the insurer, unless the insurer provides a legitimate
40 reason for the request and the purpose of the request is not to delay
41 the payment of the accident benefits, harass the provider of health
42 care or discourage the filing of claims.

43 4. An insurer shall not pay only a portion of a bill for accident
44 benefits that ~~{has been approved and}~~ is fully payable.



5. The Administrator may require an insurer to provide evidence which demonstrates that the insurer has substantially complied with the requirements of this section, including, without limitation, payment within the time required of at least 95 percent of ~~[approved]~~ accident benefits . ~~[or at least 90 percent of the total dollar amount of approved accident benefits.]~~ If the Administrator determines that an insurer is not in substantial compliance with the requirements of this section, the Administrator may require the insurer to pay an administrative fine in an amount to be determined by the Administrator.

6. The payment of interest provided for in this section for ~~[the]~~ a late payment ~~[of an approved claim]~~ may be waived only if the payment was delayed because of an act of God or another cause beyond the control of the insurer.

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

Sec. 3. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself or herself.

(b) Caused by the employee's willful intention to injure another.

(c) ~~[Proximately caused by the employee's]~~ *That occurred while the employee was in a state of* intoxication. ~~[If the employee was intoxicated at the time of his or her injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.]~~ *For the purposes of this paragraph, an employee is in a state of intoxication if the level of alcohol in the bloodstream of the employee meets or exceeds the limits set forth in subsection 1 of NRS 484C.110.*

(d) ~~[Proximately caused by the employee's use]~~ *That occurred while the employee was under the influence* of a controlled or prohibited substance. ~~[If the employee had any]~~ *For the purposes of this paragraph, an employee is under the influence of a controlled or prohibited substance if the employee had an* amount of a controlled or prohibited substance in his or her system at the time of his or her injury *that was equal to or greater than the limits set forth in subsection 3 of NRS 484C.110 and* for which the employee did not have a current and lawful prescription issued in the employee's name . ~~[or that the employee was not using in accordance with the provisions of chapter 453A of NRS, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.]~~



2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.310, 50.315 or 50.320 is admissible to prove the existence of ~~any~~ *an impermissible quantity of* alcohol or the existence, quantity or identity of ~~a~~ *an impermissible* controlled *or prohibited* substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled *or prohibited* substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

(c) The results of any testing for the use of alcohol or a controlled or prohibited substance, irrespective of the purpose for performing the test, must be made available to an insurer or employer upon request, to the extent that doing so does not conflict with federal law.

3. No compensation is payable for the death, disability or treatment of an employee if the employee's death is caused by, or insofar as the employee's disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his or her recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his or her recovery, the employee's compensation may be reduced or suspended.

5. An injured employee's compensation ~~[, other than accident benefits,]~~ must be suspended if ~~[-~~

~~(a) A]~~ *a* physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of employment ~~[-]~~ and

~~[(b)] :~~

(a) It is within the ability of the employee to correct the nonindustrial condition or injury ~~[-]~~ ; *or*

(b) If the condition or injury is a nonindustrial condition or injury, and the condition or injury interferes with the ability of the physician or chiropractor to treat, test or examine the employee.

➔ The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.



1 **6.** *As used in this section, “prohibited substance” has the*
2 *meaning ascribed to it in NRS 484C.080.*

3 **Sec. 4.** This act becomes effective upon passage and approval
4 for the purposes of adopting any regulations or performing any
5 preparatory administrative tasks that are necessary to carry out the
6 provisions of this act, and on January 1, 2016, for all other purposes.

