

ASSEMBLY BILL NO. 128—ASSEMBLYMEN COHEN;
SWANK AND YEAGER

FEBRUARY 12, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing vocational rehabilitation. (BDR 53-829)

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 provisions governing the length of a program of vocational rehabilitation and job placement assistance; revising provisions governing the circumstances under which a program of vocational rehabilitation may be extended; increasing the amount of lump sum payments in lieu of vocational rehabilitation services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) requires a vocational rehabilitation counselor to develop a plan for a program of vocational rehabilitation, including job placement assistance, for each injured employee who is eligible for vocational rehabilitation services; (2) sets forth a maximum allowable duration of 6 months for the program and job placement assistance; and (3) prohibits the appeal of the determination of an insurer to authorize or deny a third program of vocational rehabilitation. (NRS 616C.555) **Section 1** of this bill: (1) revises the maximum allowable duration for a program of vocational rehabilitation for an injured employee upon whose ability to work the treating physician or chiropractor has imposed permanent restrictions; and (2) eliminates the prohibition on the appeal of the determination of an insurer to authorize or deny a third program of vocational rehabilitation.

Existing law: (1) sets forth the circumstances under which a program for vocational rehabilitation may be extended; (2) limits the total length of such a program, based on the percentage of permanent physical impairment of the injured employee; and (3) prohibits the appeal of the determination of an insurer to grant or deny an extension of a program. (NRS 616C.560) **Section 2** of this bill: (1) provides that a program for vocational rehabilitation may be extended by the insurer or by order of a hearing officer or appeals officer; (2) eliminates the limits



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on the total length of a program; and (3) eliminates the prohibition on the appeal of the determination of an insurer to grant or deny an extension of a program.

Existing law requires any payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services to be not less than 40 percent of the maximum rehabilitation maintenance due to the injured employee. (NRS 616C.595) **Section 3** of this bill increases that amount to 55 percent of the maximum rehabilitation maintenance.

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

Section 1. NRS 616C.555 is hereby amended to read as follows:

616C.555 1. A vocational rehabilitation counselor shall develop a plan for a program of vocational rehabilitation for each injured employee who is eligible for vocational rehabilitation services pursuant to NRS 616C.590. The counselor shall work with the insurer and the injured employee to develop a program that is compatible with the injured employee's age, sex and physical condition.

2. If the counselor determines in a written assessment requested pursuant to NRS 616C.550 that the injured employee has existing marketable skills, the plan must consist of job placement assistance only. When practicable, the goal of job placement assistance must be to aid the employee in finding a position which pays a gross wage that is equal to or greater than 80 percent of the gross wage that the employee was earning at the time of his or her injury. An injured employee must not receive job placement assistance for more than 6 months after the date on which the injured employee was notified that he or she is eligible only for job placement assistance because:

(a) The injured employee was physically capable of returning to work; or

(b) It was determined that the injured employee had existing marketable skills.

3. If the counselor determines in a written assessment requested pursuant to NRS 616C.550 that the injured employee does not have existing marketable skills, the plan must consist of a program which trains or educates the injured employee and provides job placement assistance. Except as otherwise provided in NRS 616C.560, such a program must not exceed:

(a) If the injured employee has incurred a permanent disability as a result of which permanent restrictions on the ability of the injured employee to work have been imposed but no permanent physical impairment rating has been issued, or a permanent



disability with a permanent physical impairment of *0 percent, 9 months.*

(b) If the injured employee has incurred a permanent physical impairment of 1 percent or more but less than 6 percent, 12 months.

~~[(b) If the injured employee has incurred a permanent physical impairment of 6 percent or more, but less than 11 percent, 1 year.]~~

(c) If the injured employee has incurred a permanent physical impairment of ~~11~~ 6 percent or more, ~~18~~ 24 months.

➤ The percentage of the injured employee's permanent physical impairment must be determined pursuant to NRS 616C.490.

4. A plan for a program of vocational rehabilitation must comply with the requirements set forth in NRS 616C.585.

5. A plan created pursuant to subsection 2 or 3 must assist the employee in finding a job or train or educate the employee and assist the employee in finding a job that is a part of an employer's regular business operations and from which the employee will gain skills that would generally be transferable to a job with another employer.

6. A program of vocational rehabilitation must not commence before the treating physician or chiropractor, or an examining physician or chiropractor determines that the injured employee is capable of safely participating in the program.

7. If, based upon the opinion of a treating or an examining physician or chiropractor, the counselor determines that an injured employee is not eligible for vocational rehabilitation services, the counselor shall provide a copy of the opinion to the injured employee, the injured employee's employer and the insurer.

8. A plan for a program of vocational rehabilitation must be signed by a certified vocational rehabilitation counselor.

9. If an initial program of vocational rehabilitation pursuant to this section is unsuccessful, an injured employee may submit a written request for the development of a second program of vocational rehabilitation which relates to the same injury. An insurer shall authorize a second program for an injured employee upon good cause shown.

10. If a second program of vocational rehabilitation pursuant to subsection 9 is unsuccessful, an injured employee may submit a written request for the development of a third program of vocational rehabilitation which relates to the same injury. The insurer, with the approval of the employer who was the injured employee's employer at the time of his or her injury, may authorize a third program for the injured employee. If such an employer has terminated operations, the employer's approval is not required for authorization of a third



program. ~~[An insurer's determination to authorize or deny a third program of vocational rehabilitation may not be appealed.]~~

11. The Division shall adopt regulations to carry out the provisions of this section. The regulations must specify the contents of a plan for a program of vocational rehabilitation.

Sec. 2. 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 the insurer's sole discretion; or

(b) ~~In accordance with this section if:~~

~~—(1) The injured employee makes a written request to extend the program not later than 30 days after the program 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 the injured employee 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 the injured employee 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.]~~ *By order of a hearing officer or appeals officer.*

2. 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]~~ *The* decision shall be deemed to be a final determination of the insurer for the purposes of NRS 616C.315.

Sec. 3. 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 the right of the injured employee to receive vocational rehabilitation services under the injured employee's claim. Except as otherwise required by federal law, an injured employee shall not receive vocational rehabilitation services from any state agency after the injured employee 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 the injured employee 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 the right of the injured employee 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~~ 55 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. 4. The amendatory provisions of this act apply prospectively with regard to any claim pursuant to chapters 616A to 616D, inclusive, or 617 of NRS which is open and for which the claimant has not executed a formal agreement for a plan which consists of a program of training or education pursuant to subsection 3 of NRS 616C.555 on or before July 1, 2019.

Sec. 5. This act becomes effective on July 1, 2019.

