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Amendment to AB 79
Submitted By Robert Ostrovsky
For The Employers Insurance Company of Nevada
May 7, 2003

Section 1. Chapter 616A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. “External review organization” means an organization which has been issued a certificate pursuant to section 3 of this act that authorizes the organization to conduct external reviews for the purposes of chapters 616A to 616D, inclusive, of NRS.

Sec. 3. 1. If the Commissioner determines that an external review organization is qualified to conduct external reviews for the purposes of chapters 616A to 616D, inclusive, of NRS, the Commissioner shall issue a certificate to the external review organization that authorizes the organization to conduct such external reviews in accordance with the provisions of section 6 of this act and the regulations adopted by the Commissioner.

2. The Commissioner shall adopt regulations setting forth the procedures that an external review organization must follow to be issued a certificate to conduct external reviews. The regulations must include, without limitation, provisions setting forth:

(a) The manner in which an external review organization may apply for a certificate and the requirements for the issuance and renewal of the certificate pursuant to this section;

(b) The grounds for which the Commissioner may refuse to issue, suspend, revoke or refuse to renew a certificate issued pursuant to this section;

(c) The manner and circumstances under which an external review organization is required to conduct its business; and

(d) A fee for issuing or renewing a certificate of an external review organization pursuant to this section. The fee must not exceed the cost of issuing or renewing the certificate.

3. A certificate issued pursuant to this section expires 1 year after it is issued and may be renewed in accordance with regulations adopted by the Commissioner.

4. Before the Commissioner may issue a certificate to an external review organization, the external review organization must:

(a) Demonstrate to the satisfaction of the Commissioner that it is able to carry out, in a timely manner, the duties of an external review organization as set forth in section 6 of this act and the regulations adopted by the Commissioner. The demonstration must include, without limitation, proof that the external review organization employs, contracts with or otherwise retains only persons who are qualified because of their education, training, professional licensing and experience to perform the duties assigned to those persons; and

(b) Provide assurances satisfactory to the Commissioner that the external review organization will:

(1) Conduct external reviews in accordance with the provisions of section 6 of this act and the regulations adopted by the Commissioner;

(2) Render its decisions in a clear, consistent, thorough and timely manner; and

(3) Avoid conflicts of interest.

5. For the purposes of this section, an external review organization has a conflict of interest if the external review organization or any employee, agent or contractor of the external review organization who conducts an external review has a professional, familial or financial interest of a material nature with respect to any person who has a substantial interest in the outcome of the external review, including, without limitation:

(a) The claimant;

(b) The employer; or

(c) The insurer or any officer, director or management employee of the insurer.

6. The Commissioner shall not issue a certificate to an external review organization that is affiliated with:

(a) A workers' compensation organization for managed care;

(b) A workers' compensation insurer;

(c) A workers' compensation third-party Administrator; or

(d) A national, state or local trade association.

7. An external review organization which is certified or accredited by an accrediting body that is nationally recognized shall be deemed to have satisfied all the conditions and qualifications required for the external review organization to be issued a certificate pursuant to this section.

Sec. 4. NRS 616A.025 is hereby amended to read as follows:

616A.025 As used in chapters 616A to 616D, inclusive; of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to 616A.360, inclusive, and section 2 of this act have the meanings ascribed to them in those sections.

Sec. 5. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Not later than 5 business days after the date that an external review organization receives a request for external review, the external review organization shall:

(a) Review the documents and materials submitted for the external review; and

(b) Notify the injured employee, his employer and the insurer whether the external review organization needs any additional information to conduct the external review.

2. The external review organization shall render a decision on the matter not later than 15 business days after the date that it receives all information that is necessary to conduct the external review.

3. In conducting the external review, the external review organization shall consider, without limitation:

(a) The medical records of the insured;

(b) Any recommendations of the physician of the insured; and

(c) Any other information approved by the Commissioner for consideration by an external review organization.

4. In its decision, the external review organization shall specify the reasons for its decision. The external review organization shall submit a copy of its decision to:

(a) The injured employee;

(b) The employer;

(c) The insurer; and

(d) The appeals officer.

5. The Commissioner shall adopt regulations to govern the process of external review and to carry out the provisions of this section.

6. The findings and decision of the external review organization shall be final and binding on the parties and adopted by the hearing officer and appeals officer.

Sec. 6. 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 relevant to an issue in the appeal or to determine the necessity of treatment for which authorization for payment has been denied, the appeals officer shall not make medical findings of fact but ~~{may refer the employee to a physician or chiropractor of his choice who has demonstrated special competence to treat the particular medical condition of the employee. If the medical question concerns the rating of a permanent disability, the 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 Commissioner pursuant to subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor.}~~ shall submit the matter to an external review organization in accordance with section 6 of this act and the regulations adopted by the Commissioner. The insurer shall pay the costs of ~~{any examination requested by}~~ the external review. After the external review organization renders its decision on the matter, the decision is binding on the appeals 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 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 Commissioner pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.

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

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

7. The appeals officer shall render his decision:

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

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

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

Sec. 8. 1. Notwithstanding the amendatory provisions of this act, an appeals officer shall not submit a matter for external review pursuant to NRS 616C.360, as amended by this act, until the Commissioner has issued a certificate pursuant to section 3 of this act to at least one external review organization that is qualified to conduct an external review of the matter.

2. As used in this section, "Commissioner" means the Commissioner of the Division of Insurance of the Department of Business and Industry.

Sec. 9. This act becomes effective upon passage and approval for the purpose of adopting regulations, and on October 1, 2003, for all other purposes.