SENATE BILL REPORT

ESSB 6299

AS PASSED SENATE, FEBRUARY 18, 1992

Brief Description: Regulating health care and vocational services provided under industrial insurance.

SPONSORS: Senate Committee on Ways & Means (originally sponsored by Senators Anderson, Moore, Murray and Bailey; by request of Department of Labor & Industries)

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.
Signed by Senators Anderson, Vice Chairman; Bluechel, McDonald, McMullen, Moore, Murray, and Skratek.

Staff: Dave Cheal (786-7576)

Hearing Dates: February 3, 1992; February 7, 1992

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6299 be substituted therefor, and the substitute bill do pass.
Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Amondson, Bailey, Bluechel, Cantu, Gaspard, M. Kreidler, Matson, Murray, Newhouse, Niemi, Owen, Saling, L. Smith, West, and Williams.

Staff: Tim Yowell (786-7715)

Hearing Dates: February 10, 1992; February 11, 1992

BACKGROUND:

Beginning in 1985 following the work of the Joint Select Committee on Workers' Compensation, the Legislature gave several directives to the Department of Labor and Industries to initiate health care quality assurance and cost containment programs. In 1986 the department was given greater authority to conduct health care provider audits and establish eligibility requirements for providers furnishing services to injured workers.

Department action following a provider audit may be appealed to the Board of Industrial Insurance Appeals. Whether department orders should be stayed pending resolution of a provider appeal has caused controversy.

There is currently no mechanism available to the department to recover amounts paid to providers for improper and unnecessary treatment.

SUMMARY:

Provider audits. Providing high quality health care to injured workers is identified as being of paramount importance in maintaining the integrity of the industrial insurance program. It is stated that providers have no vested interest in treating injured workers, and that the Department of Labor and Industries must provide services for injured workers under the terms and conditions that are in the best interests of the workers.

For all claims, without regard to the date of entry or date the services were rendered, the department's authority to conduct provider audits is amended to: (1) include examination of bills submitted for payment; (2) permit the department to make determinations after an audit without a medical or vocational examination; (3) clarify that all information obtained by the department during an audit is confidential; (4) authorize the department to deny or reduce payment, or demand reimbursement or recoupment, of amounts inappropriately paid to providers. The demand may include amounts paid within three years before the demand; (5) if payment has been induced by fraud, permit the department to terminate or suspend the provider's eligibility to provide services and recoup the benefits paid as a result of the fraud; and (6) modify the department's authority to terminate or suspend the eligibility of providers who are providing services. The termination or suspension must be for patterns of medically unnecessary or inappropriate services. The action may be taken independent of review by other professional disciplinary authorities. Injured workers are protected from paying amounts recovered or demanded from a provider and must be assisted in finding a new health care provider if their provider is suspended.

The board may not issue a stay of a department order which is issued as a result of a provider audit unless the appealing party can demonstrate by substantial evidence that it will prevail in the eventual hearing on the merits. A decision to issue a stay must be based on the written affidavits and documents submitted by the parties. The department's complete file must be made part of the evidence. An industrial appeals judge who hears the motion for a stay may not participate in the further appeal of the case without consent of the parties.

Collection on provider audit orders. When a department order demanding repayment becomes final, the department is authorized to take certain collection actions within one year. The department may recover amounts due by offsetting those amounts against future payments made to the provider or by commencing a civil action against the provider. A warrant may be filed with the superior court which may be enforced as other superior court judgments and which may support the issuance of writs of garnishment. The department may also issue a notice to any person, business, or government agency, to withhold and deliver property in its possession that belongs to the provider owing the repayment. In a case of

probate or insolvency, the department's claim has the same priority as a tax lien.

Passage is made contingent upon funds being included in the supplemental appropriations act.

Appropriation: none

Revenue: yes

Fiscal Note: available

Effective Date: The bill contains an emergency clause and takes effect immediately.

TESTIMONY FOR:

This bill will facilitate a fair and objective way of identifying the small group of health care providers who provide inappropriate and dangerous treatment to injured workers, and an effective program for correction of the problem. A method is needed to recover funds paid for grossly inappropriate care.

TESTIMONY AGAINST:

The program lacks due process protection for providers. The recoupment method is unfair because it is retrospective.

TESTIFIED: Frank Fennerty, Phil Bork, Board of Industrial Insurance Appeals; Dennis Martin, Washington State Trial Lawyers (con); Clif Finch, AWB (pro); Joe Schilling, citizen (con); Dr. Dave Middendorf, Steve Welsly, chiropractors (con); Bob McCallister, Dr. Gary Franklin, Department of Labor and Industries (pro); Jeff Johnson, Washington State Labor Council; Gary Smith, Independent Business Association (pro)