
HOUSE BILL 2795

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Prentice and R. Meyers; by request of Department of Labor & Industries

Read first time 01/28/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to health care and vocational services provided
2 under industrial insurance; amending RCW 51.36.110 and 51.52.060;
3 adding a new section to chapter 51.36 RCW; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 51.36.110 and 1986 c 200 s 2 are each amended to read
6 as follows:

7 The integrity of the industrial insurance program of this state
8 depends in large part upon provision of the highest quality health care
9 and vocational services to workers covered under Title 51 RCW, and the
10 provision of such services is of paramount importance. Medically
11 unnecessary or inappropriate health care and vocational services delay
12 the healing process, have grave potential for further injury to
13 workers, and escalate the cost of the industrial insurance program at
14 great unfairness to both workers and employers of this state.

1 Health care and vocational service providers have no vested right
2 to treat workers of this state covered under Title 51 RCW, and the
3 department shall provide for health care and vocational services for
4 these workers under such terms and conditions as are in the best
5 interests of the workers.

6 (1) Therefore, the director of the department of labor and
7 industries or the director's ((authorized representative)) designee
8 shall have the authority to:

9 ((+1)) (a) Conduct audits and investigations of providers of
10 medical, dental, vocational, and other health services furnished to
11 ((industrially injured)) workers covered under Title 51 RCW pursuant to
12 Title 51 RCW. In the conduct of such audits or investigations, the
13 director or the director's ((authorized representatives)) designee may
14 examine all records or bills for submission of payment, or portions
15 thereof, including patient records, for which services were rendered by
16 a ((health services)) provider and reimbursed by the department or
17 self-insurer, notwithstanding the provisions of any other statute which
18 may make or purport to make such records privileged or confidential:
19 PROVIDED, That no original patient records other than radiographic x-
20 rays shall be removed from the premises of the health services
21 provider, and that the disclosure of any records or information
22 obtained under authority of this section by the department of labor and
23 industries is prohibited and constitutes a violation of RCW 42.22.040,
24 unless such disclosure is directly connected to the official duties of
25 the department: AND PROVIDED FURTHER, That the disclosure of patient
26 information as required under this section shall not subject any
27 physician or other health services provider to any liability for breach
28 of any confidential relationships between the provider and the patient:
29 AND PROVIDED FURTHER, That the director or the director's ((authorized
30 representative)) designee shall destroy all copies of patient medical

1 records in their possession upon completion of the audit,
2 investigation, or proceedings.

3 Determinations by the department following any audit or
4 investigation may be made without examination of the worker by a health
5 care or vocational services provider.

6 Notwithstanding the provisions of chapter 42.17 RCW, all
7 information obtained by the department pursuant to this section shall
8 be deemed confidential and shall not be released for inspection by any
9 person, corporation, other governmental agency, or any other entity,
10 for any reason, nor shall such information be subject to release by any
11 legal process;

12 ~~((2))~~ (b) Deny or reduce payment or demand reimbursement or
13 recoupment, with or without a penalty, of sums inappropriately paid to
14 providers. Any amounts paid within the thirty-six calendar months
15 immediately preceding the date of the demand may be included in the
16 demand: PROVIDED, That whenever any payment to a provider has been
17 induced by fraud the department may terminate or suspend eligibility to
18 participate as a provider of services furnished to any or all workers
19 covered under Title 51 RCW pursuant to Title 51 RCW and the provisions
20 of RCW 51.32.240(4) shall apply;

21 (c) Approve or deny applications to participate as a provider of
22 services furnished to ~~((industrially injured))~~ any or all workers
23 covered under Title 51 RCW pursuant to Title 51 RCW; ~~((and~~

24 ~~(3))~~ (d) Terminate or suspend eligibility to participate as a
25 provider of services furnished to ~~((industrially injured))~~ any or all
26 workers covered under Title 51 RCW pursuant to Title 51 RCW for
27 patterns of medically unnecessary or inappropriate health care and
28 vocational services independent of any action or inaction by any other
29 state agency, board, or commission including, but not limited to, those
30 disciplinary authorities established in Title 18 RCW; and

1 (e) Adopt, promulgate, amend, and rescind administrative rules, in
2 accordance with the administrative procedure act, chapter 34.05 RCW, to
3 carry out the policies and purposes of this chapter.

4 (2) The provisions of this chapter shall apply to the provision of
5 health care or vocational services on any claim without regard to the
6 date of injury or disease or the date the services were rendered.

7 **Sec. 2.** RCW 51.52.060 and 1986 c 200 s 11 are each amended to read
8 as follows:

9 Any worker, beneficiary, employer, health care provider, vocational
10 services provider, or other person aggrieved by an order, decision, or
11 award of the department must, before he or she appeals to the courts,
12 file with the board and the director, by mail or personally, within
13 sixty days from the day on which such copy of such order, decision, or
14 award was communicated to such person, a notice of appeal to the board:
15 PROVIDED, That a health services provider or other person aggrieved by
16 a department order or decision only making demand, whether with or
17 without penalty, for repayment of sums paid to a provider of medical,
18 dental, vocational, or other health services rendered to an
19 industrially injured worker must, before he or she appeals to the
20 courts, file with the board and the director, by mail or personally,
21 within twenty days from the (~~day on which such copy of such order or~~
22 ~~decision was communicated to the health services provider upon whom the~~
23 ~~department order or decision was served~~) date the department order is
24 issued, a notice of appeal to the board. Within ten days of the date
25 on which an appeal has been granted by the board, the board shall
26 notify the other interested parties thereto of the receipt thereof and
27 shall forward a copy of said notice of appeal to such other interested
28 parties. Within twenty days of the receipt of such notice of the
29 board, the worker or the employer may file with the board a cross-

1 appeal from the order of the department from which the original appeal
2 was taken: PROVIDED, That nothing contained in this section shall be
3 deemed to change, alter or modify the practice or procedure of the
4 department for the payment of awards pending appeal: AND PROVIDED,
5 That failure to file notice of appeal with both the board and the
6 department shall not be ground for denying the appeal if the notice of
7 appeal is filed with either the board or the department: AND PROVIDED,
8 That, if within the time limited for filing a notice of appeal to the
9 board from an order, decision, or award of the department, the
10 department shall direct the submission of further evidence or the
11 investigation of any further fact, the time for filing such notice of
12 appeal shall not commence to run until such person shall have been
13 advised in writing of the final decision of the department in the
14 matter: PROVIDED, FURTHER, That in the event the department shall
15 direct the submission of further evidence or the investigation of any
16 further fact, as above provided, the department shall render a final
17 order, decision, or award within ninety days from the date such further
18 submission of evidence or investigation of further fact is ordered
19 which time period may be extended by the department for good cause
20 stated in writing to all interested parties for an additional ninety
21 days: PROVIDED, FURTHER, That the department, either within the time
22 limited for appeal, or within thirty days after receiving a notice of
23 appeal, may modify, reverse or change any order, decision, or award, or
24 may hold any such order, decision, or award in abeyance for a period of
25 ninety days which time period may be extended by the department for
26 good cause stated in writing to all interested parties for an
27 additional ninety days pending further investigation in light of the
28 allegations of the notice of appeal, and the board shall thereupon deny
29 the appeal, without prejudice to the appellant's right to appeal from
30 any subsequent determinative order issued by the department: AND

1 PROVIDED FURTHER, That the board may not issue a stay of a department
2 order issued under RCW 51.36.110 unless the appealing party can
3 demonstrate by substantial evidence that it will prevail in a hearing
4 on the merits. A decision on the motion for a stay must be based on
5 written affidavits and documentary evidence, including the department's
6 file, as may be submitted by the parties. An industrial appeals judge
7 who hears or decides a motion for a stay may not, without consent of
8 the parties, participate in writing the proposed decision and order in
9 the appeal. In an appeal brought by a provider the complete file of
10 the department must be made part of the evidence and considered in
11 rendering a decision.

12 NEW SECTION. Sec. 3. A new section is added to chapter 51.36 RCW
13 to read as follows:

14 When any determination made by the department that demands payment
15 of a penalty or repayment of any sums deemed owing under this title
16 becomes final, the amount owing may be recovered by the department as
17 follows:

18 (1) Any and all amounts may be offset at any time against future
19 payments due the provider under any claim with the state fund or self-
20 insurer, as the case may be; and

21 (2) The department may collect those sums by commencement of a
22 civil action in the name of the state and paid into the medical aid
23 fund or reimbursed to the self-insurer, as the case may be; and

24 (3) The director or the director's designee may file with the clerk
25 of any county within the state a warrant in the amount of the sums
26 owing plus interest from the date the order became final. The clerk of
27 the county in which the warrant is filed shall immediately designate a
28 superior court cause number for such warrant and the clerk shall cause
29 to be entered in the judgment docket under the superior court cause

1 number assigned to the warrant, the name of the provider mentioned in
2 the warrant, the amount of the penalties and repayment owing plus
3 interest accrued, and the date when the warrant was filed. The amount
4 of the warrant as docketed shall become a lien upon the title to and
5 interest in all real and personal property of the provider against whom
6 the warrant is issued, the same as a judgment in a civil case docketed
7 in the office of the clerk. The sheriff shall then proceed in the same
8 manner and with like effect as prescribed by law with respect to
9 execution or other process issued against rights or property upon
10 judgments in the superior court. The warrant so docketed shall be
11 sufficient to support the issuance of writs of garnishment in favor of
12 the department in the manner provided by law in the case of judgment,
13 wholly or partially unsatisfied. The clerk of the court shall be
14 entitled to a filing fee of five dollars, which shall be added to the
15 amount of the warrant. A copy of the warrant shall be mailed to the
16 provider within three days of filing with the clerk; and

17 (4) The director or the director's designee may issue to any
18 person, firm, corporation, municipal corporation, political subdivision
19 of the state, public corporation, or agency of the state, a notice and
20 order to withhold and deliver property of any kind if there is reason
21 to believe that there is in the possession of the person, firm,
22 corporation, municipal corporation, political subdivision of the state,
23 public corporation, or agency of the state, property that is due or
24 owing or belonging to any provider upon whom a warrant has been served
25 by the department for payments due the department. The notice and
26 order to withhold and deliver shall be served by the sheriff of the
27 county or by the sheriff's deputy, or by any authorized representatives
28 of the director. Any person, firm, corporation, municipal corporation,
29 political subdivision of the state, public corporation, or agency of
30 the state upon whom service has been made shall answer the notice

1 within twenty days exclusive of the day of service, under oath and in
2 writing, and shall make true answers to the matters inquired of in the
3 notice and order to withhold and deliver. In the event there is in the
4 possession of the party named and served with the notice and order, any
5 property that may be subject to the claim of the department, such
6 property shall be delivered forthwith to the director or the director's
7 authorized representative upon demand. If the party served and named
8 in the notice and order fails to answer the notice and order within the
9 time prescribed in this section, the court may, after the time to
10 answer the order has expired, render judgment by default against the
11 party named in the notice for the full amount claimed by the director
12 in the notice together with costs; and

13 (5) In all cases of probate, insolvency, assignment for the
14 benefits of creditors, or bankruptcy, the claim of the state for the
15 payments due shall be a lien prior to all other liens or claims and on
16 a parity with prior tax and liens, and the mere existence of such cases
17 or conditions shall be sufficient to create such lien without any prior
18 or subsequent action by the state. All administrators, receivers, or
19 assignees for the benefit of creditors shall notify the department of
20 such administration, receivership, or assignment within thirty days
21 from date of their appointment and qualification.

22 The department must commence action pursuant to subsections (2)
23 through (4) of this section within one year of the date its order
24 becomes final.

25 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and shall take
28 effect immediately.