
ENGROSSED SUBSTITUTE HOUSE BILL 1292

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Lisk, Quall, Linville, Thompson, Mulliken, Sheldon, Grant, D. Schmidt, Skinner, Robertson, Boldt, Honeyford and Clements)

Read first time 02/14/97.

1 AN ACT Relating to expanding claims management authority for
2 industrial insurance retrospective rating programs; and adding a new
3 section to chapter 51.16 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.16 RCW
6 to read as follows:

7 (1) The department shall offer a retrospective rating plan to
8 qualified employers and qualified groups of employers. The plan must
9 be available on a voluntary basis for one coverage period and may be
10 renewed at the end of the coverage period. The retrospective rating
11 plan must be consistent with recognized insurance principles and must
12 be administered according to rules, schedules, and factors adopted by
13 the department.

14 (2) In addition to those general powers and rights deemed
15 appropriate by the department, retrospective rating plan employers and
16 groups who administer their plans with an authorized claims
17 administrator are authorized to assist the department in the processing
18 of claims that have a date of injury on or after January 1, 1998. The
19 department shall adopt rules detailing the authority of retrospective

1 rating plan employers and groups, which authority must be comprehensive
2 and include, but not be limited to, the following:

3 (a) Authorization to schedule medical examinations and
4 consultations, as long as scheduling is only with the attending
5 physician or providers who have been qualified by the department as
6 approved providers under department rules. A retrospective rating plan
7 employer or group may authorize fees for medical examinations and
8 consultations that exceed the department's medical fee or other fee
9 schedules but the employer or group must be required to pay the
10 difference. When scheduling an independent medical examination, the
11 employer or group must select an examiner or examiners from a rotating
12 list provided by the department of not more than five names for each
13 specialty, except that:

14 (i) If the list is not provided by the department within three
15 working days of the department's receipt of a written request for the
16 list, the employer or group may select any provider qualified by the
17 department as an approved provider; or

18 (ii) The employer or group may select an examiner or examiners
19 without regard to the rotating list if, under rules adopted by the
20 department, special circumstances exist in which the employer or group
21 is permitted, with the concurrence of the attending doctor, to schedule
22 the examination with any provider qualified by the department as an
23 approved provider;

24 (b) Authorization to initiate vocational services and select
25 providers from the department's contracted provider list or use
26 department providers. Vocational services may include job placement
27 services, skill enhancement services, vocational rehabilitation plans,
28 or other accepted services.

29 (3)(a) Retrospective rating plan employers and groups who
30 administer their plans with authorized claims administrators may close
31 claims as authorized in this subsection. A claim having a date of
32 injury on or after January 1, 1998, may be closed by the retrospective
33 rating plan employer or group, subject to reporting of claims to the
34 department in a manner prescribed by department rules, if the claim (i)
35 involves medical treatment or the payment, for a period of one hundred
36 and twenty days or less, of temporary disability compensation under RCW
37 51.32.090, or both, (ii) at the time medical treatment is concluded,
38 does not involve permanent disability, (iii) is one with respect to
39 which the department has not intervened under subsection (4) of this

1 section, and (iv) involves an injured worker who has returned to work
2 with the retrospective rating plan employer or group at the worker's
3 previous job or at a job that has comparable wages and benefits.

4 (b) Upon closure of a claim under this subsection, the
5 retrospective rating plan employer or group must enter a written order,
6 communicated to the worker, the attending physician, and the
7 department, which contains one of the following statements, as
8 applicable, clearly set forth in at least ten-point bold face type:

9 (i) For claims involving only medical treatment: "This order
10 constitutes notification that your claim is being closed with medical
11 benefits only as provided. If for any reason you disagree with the
12 closure of your claim, you may protest in writing to the Department of
13 Labor and Industries, Division of Insurance Services, Olympia,
14 Washington 98504, within sixty days of the date you received this
15 order."; or (ii) for claims involving the payment of temporary
16 disability compensation: "This order constitutes notification that
17 your claim is being closed with medical benefits and temporary
18 disability compensation only as provided, and with the condition that
19 you have returned to work at your previous job or at a job that has
20 comparable wages and benefits. If for any reason you disagree with the
21 closure of your claim, you may protest in writing to the Department of
22 Labor of Industries, Division of Insurance Services, Olympia,
23 Washington 98504, within sixty days of the date you received this
24 order." If the department receives a protest, the closure must be held
25 in abeyance. The department shall review the claim closure action and
26 enter a determination order as provided for in RCW 51.52.050.

27 (4) If a dispute arises from the handling of a claim under this
28 section before the condition of the injured worker becomes fixed, the
29 worker or employer may request the department to resolve the dispute or
30 the director, or his or her designee, may initiate an inquiry on his or
31 her own motion.

32 (5)(a) If the department determines that a retrospective rating
33 employer or group may have violated the authority granted in this
34 section, the department shall notify the retrospective rating employer
35 or group in writing outlining the violation and the corrective action
36 required. The notice must specify a reasonable period of time for
37 corrective action. Except as provided in (b) of this subsection, the
38 employer or group is subject to penalties under this subsection only if
39 (i) the employer or group fails to take the required corrective action

1 within the specified period, or (ii) the employer or group is
2 determined to have committed a second violation of a similar nature, in
3 which case penalties may be imposed for the second and subsequent
4 similar violations.

5 (b) If the department determines that a retrospective rating
6 employer's or group's violation of the authority granted in this
7 section resulted or could have resulted in a loss of a worker's rights
8 or benefits under this title, or other similar serious violation, the
9 employer or group is subject to penalties without regard to the
10 limitation of (a)(i) or (ii) of this subsection (5).

11 (c) If the department finds a pattern of improper claims closure or
12 other violations of the authority granted in subsection (2) or (3) of
13 this section, the director, or his or her designee, may suspend the
14 retrospective rating employer or group's authority to assist the
15 department in the processing of claims under this section for a period
16 of up to two years. The department shall issue an order and notice
17 under RCW 51.52.050 which states the grounds for the suspension. As
18 provided in chapter 51.52 RCW, the order becomes final within sixty
19 days from the date the order is communicated to the employer or group
20 unless a written request for reconsideration is filed with the
21 department or an appeal is filed with the board of industrial insurance
22 appeals.

23 (d) Except as otherwise provided in this section, this subsection
24 does not limit the department's authority to impose penalties under
25 chapter 51.48 RCW.

26 (6)(a) The director shall adopt under chapter 34.05 RCW all
27 necessary rules governing the administration of this section. The
28 rules should encourage broad participation in retrospective rating
29 plans by employers and groups of employers consistent with insurance
30 principles. The retrospective rating plan employer's or group's
31 exercise of authority under this section may require prior notification
32 to the department, but the rules must minimize the department's need to
33 respond and must ensure that a failure to respond or a delay in
34 response by the department does not impede the timely administration of
35 the claim.

36 (b) The department shall adopt rules establishing qualifications
37 for authorized claims administrators. The rules must require an
38 authorized claims administrator to demonstrate, in a manner
39 satisfactory to the department, a thorough knowledge of the industrial

1 insurance laws, including the department rules applying to
2 retrospective rating plans, and an expertise in processing claims as
3 authorized under this section. The rules must also establish
4 procedures for approval and disapproval of authorized claims
5 administrators.

6 (7) For purposes of this section:

7 (a) "Authorized claims administrator" means a person who is
8 approved by the department as meeting the qualifications established by
9 rule under subsection (6)(b) of this section.

10 (b) "Comparable wages and benefits" means that the wages and
11 benefits received in the new job do not exceed a five percent loss in
12 comparison to those received in the previous job held by the worker at
13 the time of the industrial injury.

14 (c) "Coverage period" means a one-year period beginning the first
15 day of any calendar quarter.

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