

EHB 1691 - S COMM AMD

By Committee on Commerce & Trade

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 51.04.030 and 1998 c 230 s 1 are each amended to read
4 as follows:

5 The ability of the department to manage industrial insurance health
6 services becomes more difficult as the number or providers and scopes
7 of practice are expanded. The integrity of the industrial insurance
8 program of this state depends in large part upon the provision of
9 quality health and vocational services and care to workers covered
10 under this title. Medically unnecessary or inappropriate health and
11 vocational services delay the recovery process, have grave potential
12 for further injury to workers, and escalate the cost of the industrial
13 insurance program at great unfairness to both workers and employers of
14 this state. Therefore, the director or the director's designee shall
15 accomplish the following objectives.

16 (1) The director shall supervise the providing of prompt and
17 efficient care and treatment, including care provided by physician
18 assistants governed by the provisions of chapters 18.57A and 18.71A
19 RCW, acting under a supervising physician, (~~and~~) including
20 chiropractic care, and including care provided by licensed advanced
21 registered nurse practitioners, to workers injured during the course of
22 their employment at the least cost consistent with promptness and
23 efficiency, without discrimination or favoritism, and with as great
24 uniformity as the various and diverse surrounding circumstances and
25 locations of industries will permit and to that end shall, from time to
26 time, establish and adopt and supervise the administration of printed
27 forms, rules, regulations, and practices for the furnishing of such
28 care and treatment: PROVIDED, That the department may adopt rules that
29 prescribe limits on the number or type of treatments, tests, or
30 procedures provided to injured workers, based upon the most current

1 medical and scientific evidence or the likelihood that such treatments,
2 tests, or procedures are curative or rehabilitative, that is, that they
3 are substantially likely to improve the worker's functional abilities,
4 particularly related to return to work: PROVIDED FURTHER, That the
5 medical coverage decisions of the department do not constitute a "rule"
6 as used in RCW 34.05.010(16), nor are such decisions subject to the
7 rule-making provisions of chapter 34.05 RCW except that criteria for
8 establishing medical coverage decisions shall be adopted by rule after
9 consultation with the workers' compensation advisory committee
10 established in RCW 51.04.110: PROVIDED FURTHER, That the department
11 may recommend to an injured worker particular health care services and
12 providers where specialized treatment is indicated or where cost
13 effective payment levels or rates are obtained by the department: AND
14 PROVIDED FURTHER, That the department may enter into contracts for
15 goods and services including, but not limited to, durable medical
16 equipment so long as statewide access to quality service is maintained
17 for injured workers.

18 (2) The director shall, in consultation with interested persons,
19 establish and, in his or her discretion, periodically change as may be
20 necessary, and make available a fee schedule of the maximum charges to
21 be made by any physician, surgeon, chiropractor, hospital, druggist,
22 licensed advanced registered nurse practitioner, physicians' assistants
23 as defined in chapters 18.57A and 18.71A RCW, acting under a
24 supervising physician or other agency or person rendering services to
25 injured workers. The department shall coordinate with other state
26 purchasers of health care services to establish as much consistency and
27 uniformity in billing and coding practices as possible, taking into
28 account the unique requirements and differences between programs. No
29 service covered under this title, including services provided to
30 injured workers, whether aliens or other injured workers, who are not
31 residing in the United States at the time of receiving the services,
32 shall be charged or paid at a rate or rates exceeding those specified
33 in such fee schedule, and no contract providing for greater fees shall
34 be valid as to the excess. The establishment of such a schedule,
35 exclusive of conversion factors, does not constitute "agency action" as
36 used in RCW 34.05.010(3), nor does such a fee schedule constitute a
37 "rule" as used in RCW 34.05.010(16).

1 (3) The director or self-insurer, as the case may be, shall make a
2 record of the commencement of every disability and the termination
3 thereof and, when bills are rendered for the care and treatment of
4 injured workers, shall approve and pay those which conform to the
5 adopted rules, regulations, established fee schedules, and practices of
6 the director and may reject any bill or item thereof incurred in
7 violation of the principles laid down in this section or the rules,
8 regulations, or the established fee schedules and rules and regulations
9 adopted under it.

10 **Sec. 2.** RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended
11 to read as follows:

12 In all hearings, actions or proceedings before the department or
13 the board of industrial insurance appeals, or before any court on
14 appeal from the board, any physician or licensed advanced registered
15 nurse practitioner having theretofore examined or treated the claimant
16 may be required to testify fully regarding such examination or
17 treatment, and shall not be exempt from so testifying by reason of the
18 relation of the physician or licensed advanced registered nurse
19 practitioner to patient.

20 **Sec. 3.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
21 as follows:

22 (1) Whenever any accident occurs to any worker it shall be the duty
23 of such worker or someone in his or her behalf to forthwith report such
24 accident to his or her employer, superintendent, or supervisor in
25 charge of the work, and of the employer to at once report such accident
26 and the injury resulting therefrom to the department pursuant to RCW
27 51.28.025 where the worker has received treatment from a physician or
28 a licensed advanced registered nurse practitioner, has been
29 hospitalized, disabled from work, or has died as the apparent result of
30 such accident and injury.

31 (2) Upon receipt of such notice of accident, the department shall
32 immediately forward to the worker or his or her beneficiaries or
33 dependents notification, in nontechnical language, of their rights
34 under this title. The notice must specify the worker's right to
35 receive health services from a physician or a licensed advanced

1 registered nurse practitioner of the worker's choice under RCW
2 51.36.010, including chiropractic services under RCW 51.36.015, and
3 must list the types of providers authorized to provide these services.

4 **Sec. 4.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read
5 as follows:

6 (1)(a) Where a worker is entitled to compensation under this title
7 he or she shall file with the department or his or her self-insured
8 employer, as the case may be, his or her application for such, together
9 with the certificate of the physician or licensed advanced registered
10 nurse practitioner who attended him or her. An application form
11 developed by the department shall include a notice specifying the
12 worker's right to receive health services from a physician or licensed
13 advanced registered nurse practitioner of the worker's choice under RCW
14 51.36.010, including chiropractic services under RCW 51.36.015, and
15 listing the types of providers authorized to provide these services.

16 (b) The physician or licensed advanced registered nurse
17 practitioner who attended the injured worker shall inform the injured
18 worker of his or her rights under this title and lend all necessary
19 assistance in making this application for compensation and such proof
20 of other matters as required by the rules of the department without
21 charge to the worker. The department shall provide physicians with a
22 manual which outlines the procedures to be followed in applications for
23 compensation involving occupational diseases, and which describes
24 claimants' rights and responsibilities related to occupational disease
25 claims.

26 (2) If application for compensation is made to a self-insured
27 employer, he or she shall forthwith send a copy of the application to
28 the department.

29 **Sec. 5.** RCW 51.28.025 and 1987 c 185 s 32 are each amended to read
30 as follows:

31 (1) Whenever an employer has notice or knowledge of an injury or
32 occupational disease sustained by any worker in his or her employment
33 who has received treatment from a physician or a licensed advanced
34 registered nurse practitioner, has been hospitalized, disabled from

1 work or has died as the apparent result of such injury or occupational
2 disease, the employer shall immediately report the same to the
3 department on forms prescribed by it. The report shall include:

4 (a) The name, address, and business of the employer;

5 (b) The name, address, and occupation of the worker;

6 (c) The date, time, cause, and nature of the injury or occupational
7 disease;

8 (d) Whether the injury or occupational disease arose in the course
9 of the injured worker's employment;

10 (e) All available information pertaining to the nature of the
11 injury or occupational disease including but not limited to any visible
12 signs, any complaints of the worker, any time lost from work, and the
13 observable effect on the worker's bodily functions, so far as is known;
14 and

15 (f) Such other pertinent information as the department may
16 prescribe by regulation.

17 (2) Failure or refusal to file the report required by subsection
18 (1) shall subject the offending employer to a penalty determined by the
19 director but not to exceed two hundred fifty dollars for each offense,
20 to be collected in a civil action in the name of the department and
21 paid into the supplemental pension fund.

22 **Sec. 6.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended to
23 read as follows:

24 Where death results from injury the parties entitled to
25 compensation under this title, or someone in their behalf, shall make
26 application for the same to the department or self-insurer as the case
27 may be, which application must be accompanied with proof of death and
28 proof of relationship showing the parties to be entitled to
29 compensation under this title, certificates of attending physician or
30 licensed advanced registered nurse practitioner, if any, and such proof
31 as required by the rules of the department.

32 Upon receipt of notice of accident under RCW 51.28.010, the
33 director shall immediately forward to the party or parties required to
34 make application for compensation under this section, notification, in
35 nontechnical language, of their rights under this title.

1 **Sec. 7.** RCW 51.28.055 and 1984 c 159 s 2 are each amended to read
2 as follows:

3 Claims for occupational disease or infection to be valid and
4 compensable must be filed within two years following the date the
5 worker had written notice from a physician or a licensed advanced
6 registered nurse practitioner: (1) Of the existence of his or her
7 occupational disease, and (2) that a claim for disability benefits may
8 be filed. The notice shall also contain a statement that the worker
9 has two years from the date of the notice to file a claim. The
10 physician or licensed advanced registered nurse practitioner shall file
11 the notice with the department. The department shall send a copy to
12 the worker and to the self-insurer if the worker's employer is self-
13 insured. However, a claim is valid if it is filed within two years
14 from the date of death of the worker suffering from an occupational
15 disease.

16 **Sec. 8.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read
17 as follows:

18 (1) One purpose of this title is to restore the injured worker as
19 nearly as possible to the condition of self-support as an able-bodied
20 worker. Benefits for permanent disability shall be determined under
21 the director's supervision, except as otherwise authorized in
22 subsection (9) of this section, only after the injured worker's
23 condition becomes fixed.

24 (2) All determinations of permanent disabilities shall be made by
25 the department, except as otherwise authorized in subsection (9) of
26 this section. Either the worker, employer, or self-insurer may make a
27 request or the inquiry may be initiated by the director or, as
28 authorized in subsection (9) of this section, by the self-insurer on
29 the director or the self-insurer's own motion. Determinations shall be
30 required in every instance where permanent disability is likely to be
31 present. All medical reports and other pertinent information in the
32 possession of or under the control of the employer or, if the self-
33 insurer has made a request to the department, in the possession of or
34 under the control of the self-insurer shall be forwarded to the
35 director with the request.

1 (3) A request for determination of permanent disability shall be
2 examined by the department or, if authorized in subsection (9) of this
3 section, the self-insurer, and the department shall issue an order in
4 accordance with RCW 51.52.050 or, in the case of a self-insured
5 employer, the self-insurer may: (a) Enter a written order,
6 communicated to the worker and the department self-insurance section in
7 accordance with subsection (9) of this section, or (b) request the
8 department to issue an order in accordance with RCW 51.52.050.

9 (4) The department or, in cases authorized in subsection (9) of
10 this section, the self-insurer may require that the worker present
11 himself or herself for a special medical examination by a physician or
12 physicians selected by the department, and the department or, in cases
13 authorized in subsection (9) of this section, the self-insurer may
14 require that the worker present himself or herself for a personal
15 interview. The costs of the examination or interview, including
16 payment of any reasonable travel expenses, shall be paid by the
17 department or self-insurer, as the case may be.

18 (5) The director may establish a medical bureau within the
19 department to perform medical examinations under this section.
20 Physicians hired or retained for this purpose shall be grounded in
21 industrial medicine and in the assessment of industrial physical
22 impairment. Self-insurers shall bear a proportionate share of the cost
23 of the medical bureau in a manner to be determined by the department.

24 (6) Where a dispute arises from the handling of any claim before
25 the condition of the injured worker becomes fixed, the worker,
26 employer, or self-insurer may request the department to resolve the
27 dispute or the director may initiate an inquiry on his or her own
28 motion. In these cases, the department shall proceed as provided in
29 this section and an order shall issue in accordance with RCW 51.52.050.

30 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
31 1986, and before August 1, 1997, (ii) involves only medical treatment
32 and the payment of temporary disability compensation under RCW
33 51.32.090 or only the payment of temporary disability compensation
34 under RCW 51.32.090, (iii) at the time medical treatment is concluded
35 does not involve permanent disability, (iv) is one with respect to
36 which the department has not intervened under subsection (6) of this
37 section, and (v) the injured worker has returned to work with the self-

1 insured employer of record, whether at the worker's previous job or at
2 a job that has comparable wages and benefits, the claim may be closed
3 by the self-insurer, subject to reporting of claims to the department
4 in a manner prescribed by department rules adopted under chapter 34.05
5 RCW.

6 (b) All determinations of permanent disability for claims accepted
7 under this subsection (7) by self-insurers shall be made by the self-
8 insured section of the department under subsections (1) through (4) of
9 this section.

10 (c) Upon closure of a claim under (a) of this subsection, the self-
11 insurer shall enter a written order, communicated to the worker and the
12 department self-insurance section, which contains the following
13 statement clearly set forth in bold face type: "This order constitutes
14 notification that your claim is being closed with medical benefits and
15 temporary disability compensation only as provided, and with the
16 condition you have returned to work with the self-insured employer. If
17 for any reason you disagree with the conditions or duration of your
18 return to work or the medical benefits or the temporary disability
19 compensation that has been provided, you must protest in writing to the
20 department of labor and industries, self-insurance section, within
21 sixty days of the date you received this order."

22 (8)(a) If a claim (i) is accepted by a self-insurer after June 30,
23 1990, and before August 1, 1997, (ii) involves only medical treatment,
24 (iii) does not involve payment of temporary disability compensation
25 under RCW 51.32.090, and (iv) at the time medical treatment is
26 concluded does not involve permanent disability, the claim may be
27 closed by the self-insurer, subject to reporting of claims to the
28 department in a manner prescribed by department rules adopted under
29 chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall
30 enter a written order, communicated to the worker, which contains the
31 following statement clearly set forth in bold-face type: "This order
32 constitutes notification that your claim is being closed with medical
33 benefits only, as provided. If for any reason you disagree with this
34 closure, you must protest in writing to the Department of Labor and
35 Industries, Olympia, within 60 days of the date you received this
36 order. The department will then review your claim and enter a further
37 determinative order."

1 (b) All determinations of permanent disability for claims accepted
2 under this subsection (8) by self-insurers shall be made by the self-
3 insured section of the department under subsections (1) through (4) of
4 this section.

5 (9)(a) If a claim: (i) Is accepted by a self-insurer after July
6 31, 1997; (ii)(A) involves only medical treatment, or medical treatment
7 and the payment of temporary disability compensation under RCW
8 51.32.090, and a determination of permanent partial disability, if
9 applicable, has been made by the self-insurer as authorized in this
10 subsection; or (B) involves only the payment of temporary disability
11 compensation under RCW 51.32.090 and a determination of permanent
12 partial disability, if applicable, has been made by the self-insurer as
13 authorized in this subsection; (iii) is one with respect to which the
14 department has not intervened under subsection (6) of this section; and
15 (iv) concerns an injured worker who has returned to work with the self-
16 insured employer of record, whether at the worker's previous job or at
17 a job that has comparable wages and benefits, the claim may be closed
18 by the self-insurer, subject to reporting of claims to the department
19 in a manner prescribed by department rules adopted under chapter 34.05
20 RCW.

21 (b) If a physician or licensed advanced registered nurse
22 practitioner submits a report to the self-insurer that concludes that
23 the worker's condition is fixed and stable and supports payment of a
24 permanent partial disability award, and if within fourteen days from
25 the date the self-insurer mailed the report to the attending or
26 treating physician or licensed advanced registered nurse practitioner,
27 the worker's attending or treating physician or licensed advanced
28 registered nurse practitioner disagrees in writing that the worker's
29 condition is fixed and stable, the self-insurer must get a supplemental
30 medical opinion from a provider on the department's approved examiner's
31 list before closing the claim. In the alternative, the self-insurer
32 may forward the claim to the department, which must review the claim
33 and enter a final order as provided for in RCW 51.52.050.

34 (c) Upon closure of a claim under this subsection (9), the self-
35 insurer shall enter a written order, communicated to the worker and the
36 department self-insurance section, which contains the following
37 statement clearly set forth in bold-face type: "This order constitutes

1 notification that your claim is being closed with such medical benefits
2 and temporary disability compensation as provided to date and with such
3 award for permanent partial disability, if any, as set forth below, and
4 with the condition that you have returned to work with the self-insured
5 employer. If for any reason you disagree with the conditions or
6 duration of your return to work or the medical benefits, temporary
7 disability compensation provided, or permanent partial disability that
8 has been awarded, you must protest in writing to the Department of
9 Labor and Industries, Self-Insurance Section, within sixty days of the
10 date you received this order. If you do not protest this order to the
11 department, this order will become final."

12 (d) All determinations of permanent partial disability for claims
13 accepted by self-insurers under this subsection (9) may be made by the
14 self-insurer or the self-insurer may request a determination by the
15 self-insured section of the department. All determinations shall be
16 made under subsections (1) through (4) of this section.

17 (10) If the department receives a protest of an order issued by a
18 self-insurer under subsections (7) through (9) of this section, the
19 self-insurer's closure order must be held in abeyance. The department
20 shall review the claim closure action and enter a further determinative
21 order as provided for in RCW 51.52.050. If no protest is timely filed,
22 the closing order issued by the self-insurer shall become final and
23 shall have the same force and effect as a department order that has
24 become final under RCW 51.52.050.

25 (11) If within two years of claim closure under subsections (7)
26 through (9) of this section, the department determines that the self-
27 insurer has made payment of benefits because of clerical error, mistake
28 of identity, or innocent misrepresentation or the department discovers
29 a violation of the conditions of claim closure, the department may
30 require the self-insurer to correct the benefits paid or payable. This
31 subsection (11) does not limit in any way the application of RCW
32 51.32.240.

33 (12) For the purposes of this section, "comparable wages and
34 benefits" means wages and benefits that are at least ninety-five
35 percent of the wages and benefits received by the worker at the time of
36 injury.

1 **Sec. 9.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
2 c 271 s 1 are each reenacted and amended to read as follows:

3 (1) When the total disability is only temporary, the schedule of
4 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
5 the total disability continues.

6 (2) Any compensation payable under this section for children not in
7 the custody of the injured worker as of the date of injury shall be
8 payable only to such person as actually is providing the support for
9 such child or children pursuant to the order of a court of record
10 providing for support of such child or children.

11 (3)(a) As soon as recovery is so complete that the present earning
12 power of the worker, at any kind of work, is restored to that existing
13 at the time of the occurrence of the injury, the payments shall cease.
14 If and so long as the present earning power is only partially restored,
15 the payments shall:

16 (i) For claims for injuries that occurred before May 7, 1993,
17 continue in the proportion which the new earning power shall bear to
18 the old; or

19 (ii) For claims for injuries occurring on or after May 7, 1993,
20 equal eighty percent of the actual difference between the worker's
21 present wages and earning power at the time of injury, but: (A) The
22 total of these payments and the worker's present wages may not exceed
23 one hundred fifty percent of the average monthly wage in the state as
24 computed under RCW 51.08.018; (B) the payments may not exceed one
25 hundred percent of the entitlement as computed under subsection (1) of
26 this section; and (C) the payments may not be less than the worker
27 would have received if (a)(i) of this subsection had been applicable to
28 the worker's claim.

29 (b) No compensation shall be payable under this subsection (3)
30 unless the loss of earning power shall exceed five percent.

31 (4)(a) Whenever the employer of injury requests that a worker who
32 is entitled to temporary total disability under this chapter be
33 certified by a physician or licensed advanced registered nurse
34 practitioner as able to perform available work other than his or her
35 usual work, the employer shall furnish to the physician or licensed
36 advanced registered nurse practitioner, with a copy to the worker, a
37 statement describing the work available with the employer of injury in

1 terms that will enable the physician or licensed advanced registered
2 nurse practitioner to relate the physical activities of the job to the
3 worker's disability. The physician or licensed advanced registered
4 nurse practitioner shall then determine whether the worker is
5 physically able to perform the work described. The worker's temporary
6 total disability payments shall continue until the worker is released
7 by his or her physician or licensed advanced registered nurse
8 practitioner for the work, and begins the work with the employer of
9 injury. If the work thereafter comes to an end before the worker's
10 recovery is sufficient in the judgment of his or her physician or
11 licensed advanced registered nurse practitioner to permit him or her to
12 return to his or her usual job, or to perform other available work
13 offered by the employer of injury, the worker's temporary total
14 disability payments shall be resumed. Should the available work
15 described, once undertaken by the worker, impede his or her recovery to
16 the extent that in the judgment of his or her physician or licensed
17 advanced registered nurse practitioner he or she should not continue to
18 work, the worker's temporary total disability payments shall be resumed
19 when the worker ceases such work.

20 (b) Once the worker returns to work under the terms of this
21 subsection (4), he or she shall not be assigned by the employer to work
22 other than the available work described without the worker's written
23 consent, or without prior review and approval by the worker's physician
24 or licensed advanced registered nurse practitioner.

25 (c) If the worker returns to work under this subsection (4), any
26 employee health and welfare benefits that the worker was receiving at
27 the time of injury shall continue or be resumed at the level provided
28 at the time of injury. Such benefits shall not be continued or resumed
29 if to do so is inconsistent with the terms of the benefit program, or
30 with the terms of the collective bargaining agreement currently in
31 force.

32 (d) In the event of any dispute as to the worker's ability to
33 perform the available work offered by the employer, the department
34 shall make the final determination.

35 (5) No worker shall receive compensation for or during the day on
36 which injury was received or the three days following the same, unless
37 his or her disability shall continue for a period of fourteen

1 consecutive calendar days from date of injury: PROVIDED, That attempts
2 to return to work in the first fourteen days following the injury shall
3 not serve to break the continuity of the period of disability if the
4 disability continues fourteen days after the injury occurs.

5 (6) Should a worker suffer a temporary total disability and should
6 his or her employer at the time of the injury continue to pay him or
7 her the wages which he or she was earning at the time of such injury,
8 such injured worker shall not receive any payment provided in
9 subsection (1) of this section during the period his or her employer
10 shall so pay such wages.

11 (7) In no event shall the monthly payments provided in this section
12 exceed the applicable percentage of the average monthly wage in the
13 state as computed under the provisions of RCW 51.08.018 as follows:

| AFTER | PERCENTAGE |
|---------------|------------|
| June 30, 1993 | 105% |
| June 30, 1994 | 110% |
| June 30, 1995 | 115% |
| June 30, 1996 | 120% |

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19 (8) If the supervisor of industrial insurance determines that the
20 worker is voluntarily retired and is no longer attached to the work
21 force, benefits shall not be paid under this section.

22 **Sec. 10.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
23 as follows:

24 (1) One of the primary purposes of this title is to enable the
25 injured worker to become employable at gainful employment. To this
26 end, the department or self-insurers shall utilize the services of
27 individuals and organizations, public or private, whose experience,
28 training, and interests in vocational rehabilitation and retraining
29 qualify them to lend expert assistance to the supervisor of industrial
30 insurance in such programs of vocational rehabilitation as may be
31 reasonable to make the worker employable consistent with his or her
32 physical and mental status. Where, after evaluation and recommendation
33 by such individuals or organizations and prior to final evaluation of
34 the worker's permanent disability and in the sole opinion of the

1 supervisor or supervisor's designee, whether or not medical treatment
2 has been concluded, vocational rehabilitation is both necessary and
3 likely to enable the injured worker to become employable at gainful
4 employment, the supervisor or supervisor's designee may, in his or her
5 sole discretion, pay or, if the employer is a self-insurer, direct the
6 self-insurer to pay the cost as provided in subsection (3) of this
7 section.

8 (2) When in the sole discretion of the supervisor or the
9 supervisor's designee vocational rehabilitation is both necessary and
10 likely to make the worker employable at gainful employment, then the
11 following order of priorities shall be used:

12 (a) Return to the previous job with the same employer;

13 (b) Modification of the previous job with the same employer
14 including transitional return to work;

15 (c) A new job with the same employer in keeping with any
16 limitations or restrictions;

17 (d) Modification of a new job with the same employer including
18 transitional return to work;

19 (e) Modification of the previous job with a new employer;

20 (f) A new job with a new employer or self-employment based upon
21 transferable skills;

22 (g) Modification of a new job with a new employer;

23 (h) A new job with a new employer or self-employment involving on-
24 the-job training;

25 (i) Short-term retraining and job placement.

26 (3)(a) Except as provided in (b) of this subsection, costs for
27 vocational rehabilitation benefits allowed by the supervisor or
28 supervisor's designee under subsection (1) of this section may include
29 the cost of books, tuition, fees, supplies, equipment, transportation,
30 child or dependent care, and other necessary expenses for any such
31 worker in an amount not to exceed three thousand dollars in any fifty-
32 two week period except as authorized by RCW 51.60.060, and the cost of
33 continuing the temporary total disability compensation under RCW
34 51.32.090 while the worker is actively and successfully undergoing a
35 formal program of vocational rehabilitation.

36 (b) Beginning with vocational rehabilitation plans approved on or
37 after July 1, 1999, costs for vocational rehabilitation benefits

1 allowed by the supervisor or supervisor's designee under subsection (1)
2 of this section may include the cost of books, tuition, fees, supplies,
3 equipment, child or dependent care, and other necessary expenses for
4 any such worker in an amount not to exceed four thousand dollars in any
5 fifty-two week period except as authorized by RCW 51.60.060, and the
6 cost of transportation and continuing the temporary total disability
7 compensation under RCW 51.32.090 while the worker is actively and
8 successfully undergoing a formal program of vocational rehabilitation.

9 (c) The expenses allowed under (a) or (b) of this subsection may
10 include training fees for on-the-job training and the cost of
11 furnishing tools and other equipment necessary for self-employment or
12 reemployment. However, compensation or payment of retraining with job
13 placement expenses under (a) or (b) of this subsection may not be
14 authorized for a period of more than fifty-two weeks, except that such
15 period may, in the sole discretion of the supervisor after his or her
16 review, be extended for an additional fifty-two weeks or portion
17 thereof by written order of the supervisor.

18 (d) In cases where the worker is required to reside away from his
19 or her customary residence, the reasonable cost of board and lodging
20 shall also be paid.

21 (e) Costs paid under this subsection shall be chargeable to the
22 employer's cost experience or shall be paid by the self-insurer as the
23 case may be.

24 (4) In addition to the vocational rehabilitation expenditures
25 provided for under subsection (3) of this section, an additional five
26 thousand dollars may, upon authorization of the supervisor or the
27 supervisor's designee, be expended for: (a) Accommodations for an
28 injured worker that are medically necessary for the worker to
29 participate in an approved retraining plan; and (b) accommodations
30 necessary to perform the essential functions of an occupation in which
31 an injured worker is seeking employment, consistent with the retraining
32 plan or the recommendations of a vocational evaluation. The injured
33 worker's attending physician or licensed advanced registered nurse
34 practitioner must verify the necessity of the modifications or
35 accommodations. The total expenditures authorized in this subsection
36 and the expenditures authorized under RCW 51.32.250 shall not exceed
37 five thousand dollars.

1 (5) The department shall establish criteria to monitor the quality
2 and effectiveness of rehabilitation services provided by the
3 individuals and organizations used under subsection (1) of this
4 section. The state fund shall make referrals for vocational
5 rehabilitation services based on these performance criteria.

6 (6) The department shall engage in, where feasible and cost-
7 effective, a cooperative program with the state employment security
8 department to provide job placement services under this section.

9 (7) The benefits in this section shall be provided for the injured
10 workers of self-insured employers. Self-insurers shall report both
11 benefits provided and benefits denied under this section in the manner
12 prescribed by the department by rule adopted under chapter 34.05 RCW.
13 The director may, in his or her sole discretion and upon his or her own
14 initiative or at any time that a dispute arises under this section,
15 promptly make such inquiries as circumstances require and take such
16 other action as he or she considers will properly determine the matter
17 and protect the rights of the parties.

18 (8) Except as otherwise provided in this section, the benefits
19 provided for in this section are available to any otherwise eligible
20 worker regardless of the date of industrial injury. However, claims
21 shall not be reopened solely for vocational rehabilitation purposes.

22 **Sec. 11.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read
23 as follows:

24 Upon the occurrence of any injury to a worker entitled to
25 compensation under the provisions of this title, he or she shall
26 receive proper and necessary medical and surgical services at the hands
27 of a physician or licensed advanced registered nurse practitioner of
28 his or her own choice, if conveniently located, and proper and
29 necessary hospital care and services during the period of his or her
30 disability from such injury, but the same shall be limited in point of
31 duration as follows:

32 In the case of permanent partial disability, not to extend beyond
33 the date when compensation shall be awarded him or her, except when the
34 worker returned to work before permanent partial disability award is
35 made, in such case not to extend beyond the time when monthly
36 allowances to him or her shall cease; in case of temporary disability

1 not to extend beyond the time when monthly allowances to him or her
2 shall cease: PROVIDED, That after any injured worker has returned to
3 his or her work his or her medical and surgical treatment may be
4 continued if, and so long as, such continuation is deemed necessary by
5 the supervisor of industrial insurance to be necessary to his or her
6 more complete recovery; in case of a permanent total disability not to
7 extend beyond the date on which a lump sum settlement is made with him
8 or her or he or she is placed upon the permanent pension roll:
9 PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely
10 in his or her discretion, may authorize continued medical and surgical
11 treatment for conditions previously accepted by the department when
12 such medical and surgical treatment is deemed necessary by the
13 supervisor of industrial insurance to protect such worker's life or
14 provide for the administration of medical and therapeutic measures
15 including payment of prescription medications, but not including those
16 controlled substances currently scheduled by the state board of
17 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50
18 RCW, which are necessary to alleviate continuing pain which results
19 from the industrial injury. In order to authorize such continued
20 treatment the written order of the supervisor of industrial insurance
21 issued in advance of the continuation shall be necessary.

22 The supervisor of industrial insurance, the supervisor's designee,
23 or a self-insurer, in his or her sole discretion, may authorize
24 inoculation or other immunological treatment in cases in which a work-
25 related activity has resulted in probable exposure of the worker to a
26 potential infectious occupational disease. Authorization of such
27 treatment does not bind the department or self-insurer in any
28 adjudication of a claim by the same worker or the worker's beneficiary
29 for an occupational disease.

30 **Sec. 12.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read
31 as follows:

32 Physicians or licensed advanced registered nurse practitioners
33 examining or attending injured workers under this title shall comply
34 with rules and regulations adopted by the director, and shall make such
35 reports as may be requested by the department or self-insurer upon the
36 condition or treatment of any such worker, or upon any other matters

1 concerning such workers in their care. Except under RCW 49.17.210 and
2 49.17.250, all medical information in the possession or control of any
3 person and relevant to the particular injury in the opinion of the
4 department pertaining to any worker whose injury or occupational
5 disease is the basis of a claim under this title shall be made
6 available at any stage of the proceedings to the employer, the
7 claimant's representative, and the department upon request, and no
8 person shall incur any legal liability by reason of releasing such
9 information.

10 **Sec. 13.** RCW 51.36.110 and 1994 c 154 s 312 are each amended to
11 read as follows:

12 The director of the department of labor and industries or the
13 director's authorized representative shall have the authority to:

14 (1) Conduct audits and investigations of providers of medical,
15 chiropractic, dental, vocational, and other health services furnished
16 to industrially injured workers pursuant to Title 51 RCW. In the
17 conduct of such audits or investigations, the director or the
18 director's authorized representatives may examine all records, or
19 portions thereof, including patient records, for which services were
20 rendered by a health services provider and reimbursed by the
21 department, notwithstanding the provisions of any other statute which
22 may make or purport to make such records privileged or confidential:
23 PROVIDED, That no original patient records shall be removed from the
24 premises of the health services provider, and that the disclosure of
25 any records or information obtained under authority of this section by
26 the department of labor and industries is prohibited and constitutes a
27 violation of RCW 42.52.050, unless such disclosure is directly
28 connected to the official duties of the department: AND PROVIDED
29 FURTHER, That the disclosure of patient information as required under
30 this section shall not subject any physician, licensed advanced
31 registered nurse practitioner, or other health services provider to any
32 liability for breach of any confidential relationships between the
33 provider and the patient: AND PROVIDED FURTHER, That the director or
34 the director's authorized representative shall destroy all copies of
35 patient medical records in their possession upon completion of the
36 audit, investigation, or proceedings;

1 (2) Approve or deny applications to participate as a provider of
2 services furnished to industrially injured workers pursuant to Title 51
3 RCW; and

4 (3) Terminate or suspend eligibility to participate as a provider
5 of services furnished to industrially injured workers pursuant to Title
6 51 RCW.

7 A provider may appeal any action, decision, or order by the
8 director or the director's authorized representative under this
9 section. Proceedings during the appeal shall be as prescribed in this
10 title. Any order terminating or suspending a provider's eligibility to
11 render services to industrially injured workers pursuant to this
12 section shall become effective thirty days after the date the
13 department order is communicated to the provider. An appeal by a
14 provider shall not act as a stay of the action unless the board or
15 court, for good cause shown, orders otherwise.

16 **Sec. 14.** RCW 51.48.060 and 1985 c 347 s 6 are each amended to read
17 as follows:

18 Any physician or licensed advanced registered nurse practitioner
19 who fails, neglects or refuses to file a report with the director, as
20 required by this title, within five days of the date of treatment,
21 showing the condition of the injured worker at the time of treatment,
22 a description of the treatment given, and an estimate of the probable
23 duration of the injury, or who fails or refuses to render all necessary
24 assistance to the injured worker, as required by this title, shall be
25 subject to a civil penalty determined by the director but not to exceed
26 two hundred fifty dollars.

27 **Sec. 15.** RCW 51.52.010 and 1999 c 149 s 1 are each amended to read
28 as follows:

29 There shall be a "board of industrial insurance appeals,"
30 hereinafter called the "board," consisting of three members appointed
31 by the governor, with the advice and consent of the senate, as
32 hereinafter provided. One shall be a representative of the public and
33 a lawyer, appointed from a mutually agreed to list of not less than
34 three active members of the Washington state bar association, submitted
35 to the governor by the two organizations defined below, and such member

1 shall be the chairperson of said board. The second member shall be a
2 representative of the majority of workers engaged in employment under
3 this title and selected from a list of not less than three names
4 submitted to the governor by an organization, statewide in scope, which
5 through its affiliates embraces a cross section and a majority of the
6 organized labor of the state. The third member shall be a
7 representative of employers under this title, and appointed from a list
8 of at least three names submitted to the governor by a recognized
9 statewide organization of employers, representing a majority of
10 employers. The initial terms of office of the members of the board
11 shall be for six, four, and two years respectively. Thereafter all
12 terms shall be for a period of six years. Each member of the board
13 shall be eligible for reappointment and shall hold office until his or
14 her successor is appointed and qualified. In the event of a vacancy
15 the governor is authorized to appoint a successor to fill the unexpired
16 term of his or her predecessor. All appointments to the board shall be
17 made in conformity with the foregoing plan. In the event a board
18 member becomes incapacitated in excess of thirty days either due to his
19 or her illness or that of an immediate family member as determined by
20 a request for family leave or as certified by the affected member's
21 treating physician or licensed advanced registered nurse practitioner,
22 the governor shall appoint an acting member to serve pro tem. Such an
23 appointment shall be made in conformity with the foregoing plan, except
24 that the list of candidates shall be submitted to the governor not more
25 than fifteen days after the affected organizations are notified of the
26 incapacity and the governor shall make the appointment within fifteen
27 days after the list is submitted. The temporary member shall serve
28 until such time as the affected member is able to reassume his or her
29 duties by returning from requested family leave or as determined by the
30 treating physician or licensed advanced registered nurse practitioner
31 or until the affected member's term expires, whichever occurs first.
32 Whenever the workload of the board and its orderly and expeditious
33 disposition shall necessitate, the governor may appoint two additional
34 pro-tem members in addition to the regular members. Such appointments
35 shall be for a definite period of time, and shall be made from lists
36 submitted respectively by labor and industry as in the case of regular
37 members. One pro-tem member shall be a representative of labor and one

1 shall be a representative of industry. Members shall devote their
2 entire time to the duties of the board and shall receive for their
3 services a salary as fixed by the governor in accordance with the
4 provisions of RCW 43.03.040 which shall be in addition to travel
5 expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing
6 or hereafter amended. Headquarters for the board shall be located in
7 Olympia. The board shall adopt a seal which shall be judicially
8 recognized.

9 NEW SECTION. **Sec. 16.** A new section is added to chapter 51.36 RCW
10 to read as follows:

11 Licensed advanced registered nurse practitioners are recognized as
12 independent practitioners and, subject to the provisions of this title,
13 the health services available to an injured worker under RCW 51.36.010
14 include health services provided by licensed advanced registered nurse
15 practitioners within their scope of practice.

16 NEW SECTION. **Sec. 17.** By December 1, 2005, the department of
17 labor and industries shall report to the senate committee on commerce
18 and trade and the house committee on commerce and labor, or successor
19 committees, on the implementation of this act, including but not
20 limited to the effects of this act on injured worker outcomes, claim
21 costs, and disputed claims.

22 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act are
23 necessary for the immediate preservation of the public peace, health,
24 or safety, or support of the state government and its existing public
25 institutions, and take effect July 1, 2003.

26 NEW SECTION. **Sec. 19.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected."

1 On page 1, line 3 of the title, after "insurance;" strike the
2 remainder of the title and insert "amending RCW 51.04.030, 51.04.050,
3 51.28.010, 51.28.020, 51.28.025, 51.28.030, 51.28.055, 51.32.055,
4 51.32.095, 51.36.010, 51.36.060, 51.36.110, 51.48.060, and 51.52.010;
5 reenacting and amending RCW 51.32.090; adding a new section to chapter
6 51.36 RCW; creating a new section; providing an effective date; and
7 declaring an emergency."

EFFECT: Allows the department to adopt rules limiting the number or type of treatments based on the likelihood that those procedures are substantially likely to improve the worker's functional abilities. Authorizes providers to appeal provider eligibility actions by the department. Removes expiration date.

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