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SENATE BILL 6081

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State of Washington

58th Legislature

2003 Regular Session

By Senator Honeyford

Read first time 04/21/2003. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to the treatment of injured workers covered by  
2 industrial insurance and requirements for providers of treatment to  
3 injured workers covered by industrial insurance; amending RCW  
4 51.04.030, 51.04.030, 51.04.050, 51.28.010, 51.28.020, 51.28.025,  
5 51.28.030, 51.28.055, 51.32.055, 51.32.095, 51.36.010, 51.36.060,  
6 51.36.110, 51.36.110, 51.48.060, and 51.52.010; reenacting and amending  
7 RCW 51.32.090; adding a new section to chapter 51.28 RCW; adding a new  
8 section to chapter 51.36 RCW; creating a new section; providing  
9 effective dates; providing an expiration date; and declaring an  
10 emergency.

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

12 **Sec. 1.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read  
13 as follows:

14 The ability of the department to manage industrial insurance health  
15 services becomes more difficult as the number of providers and scopes  
16 of practice are expanded. The integrity of the industrial insurance  
17 program of this state depends in large part upon the provision of  
18 quality health and vocational services and care to workers covered  
19 under this title. Medically unnecessary or inappropriate health and

1 vocational services delay the recovery process, have grave potential  
2 for further injury to workers, and escalate the cost of the industrial  
3 insurance program at great unfairness to both workers and employers of  
4 this state. Therefore, the director or the director's designee shall  
5 accomplish the following objectives.

6 (1) The director shall supervise the providing of prompt and  
7 efficient care and treatment, including care provided by physician  
8 assistants governed by the provisions of chapters 18.57A and 18.71A  
9 RCW, acting under a supervising physician, ((and)) including  
10 chiropractic care, and including care provided by licensed advanced  
11 registered nurse practitioners, to workers injured during the course of  
12 their employment at the least cost consistent with promptness and  
13 efficiency, without discrimination or favoritism, and with as great  
14 uniformity as the various and diverse surrounding circumstances and  
15 locations of industries will permit and to that end shall, from time to  
16 time, establish and adopt and supervise the administration of printed  
17 forms, rules, regulations, and practices for the furnishing of such  
18 care and treatment: PROVIDED, That the department may adopt rules that  
19 prescribe limits on the number or type of treatments, tests, or  
20 procedures provided to injured workers, based upon the most current  
21 medical and scientific evidence or the likelihood that such treatments,  
22 tests, or procedures are curative or rehabilitative, that is, that they  
23 are substantially likely to improve the worker's functional abilities,  
24 particularly related to return to work: PROVIDED FURTHER, That the  
25 medical coverage decisions of the department do not constitute a "rule"  
26 as used in RCW 34.05.010(16), nor are such decisions subject to the  
27 rule-making provisions of chapter 34.05 RCW except that criteria for  
28 establishing medical coverage decisions shall be adopted by rule after  
29 consultation with the workers' compensation advisory committee  
30 established in RCW 51.04.110: PROVIDED FURTHER, That the department  
31 may recommend to an injured worker particular health care services and  
32 providers where specialized treatment is indicated or where cost  
33 effective payment levels or rates are obtained by the department: AND  
34 PROVIDED FURTHER, That the department may enter into contracts for  
35 goods and services including, but not limited to, durable medical  
36 equipment so long as statewide access to quality service is maintained  
37 for injured workers.

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

21 (3) The director or self-insurer, as the case may be, shall make a  
22 record of the commencement of every disability and the termination  
23 thereof and, when bills are rendered for the care and treatment of  
24 injured workers, shall approve and pay those which conform to the  
25 adopted rules, regulations, established fee schedules, and practices of  
26 the director and may reject any bill or item thereof incurred in  
27 violation of the principles laid down in this section or the rules,  
28 regulations, or the established fee schedules and rules and regulations  
29 adopted under it.

30 **Sec. 2.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read  
31 as follows:

32 The ability of the department to manage industrial insurance health  
33 services becomes more difficult as the number or providers and scopes  
34 of practice are expanded. The integrity of the industrial insurance  
35 program of this state depends in large part upon the provision of  
36 quality health and vocational services and care to workers covered  
37 under this title. Medically unnecessary or inappropriate health and

1 vocational services delay the recovery process, have grave potential  
2 for further injury to workers, and escalate the cost of the industrial  
3 insurance program at great unfairness to both workers and employers of  
4 this state. Therefore, the director or the director's designee shall  
5 accomplish the following objectives.

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7 efficient care and treatment, including care provided by physician  
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9 RCW, acting under a supervising physician, and including chiropractic  
10 care, to workers injured during the course of their employment at the  
11 least cost consistent with promptness and efficiency, without  
12 discrimination or favoritism, and with as great uniformity as the  
13 various and diverse surrounding circumstances and locations of  
14 industries will permit and to that end shall, from time to time,  
15 establish and adopt and supervise the administration of printed forms,  
16 rules, regulations, and practices for the furnishing of such care and  
17 treatment: PROVIDED, That the department may adopt rules that  
18 prescribe limits on the number or type of treatments, tests, or  
19 procedures provided to injured workers, based upon the most current  
20 medical and scientific evidence or the likelihood that such treatments,  
21 tests, or procedures are curative or rehabilitative, that is, that they  
22 are substantially likely to improve the worker's functional abilities,  
23 particularly related to return to work: PROVIDED FURTHER, That the  
24 medical coverage decisions of the department do not constitute a "rule"  
25 as used in RCW 34.05.010(16), nor are such decisions subject to the  
26 rule-making provisions of chapter 34.05 RCW except that criteria for  
27 establishing medical coverage decisions shall be adopted by rule after  
28 consultation with the workers' compensation advisory committee  
29 established in RCW 51.04.110: PROVIDED FURTHER, That the department  
30 may recommend to an injured worker particular health care services and  
31 providers where specialized treatment is indicated or where cost  
32 effective payment levels or rates are obtained by the department: AND  
33 PROVIDED FURTHER, That the department may enter into contracts for  
34 goods and services including, but not limited to, durable medical  
35 equipment so long as statewide access to quality service is maintained  
36 for injured workers.

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38 establish and, in his or her discretion, periodically change as may be

1 necessary, and make available a fee schedule of the maximum charges to  
2 be made by any physician, surgeon, chiropractor, hospital, druggist,  
3 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,  
4 acting under a supervising physician or other agency or person  
5 rendering services to injured workers. The department shall coordinate  
6 with other state purchasers of health care services to establish as  
7 much consistency and uniformity in billing and coding practices as  
8 possible, taking into account the unique requirements and differences  
9 between programs. No service covered under this title, including  
10 services provided to injured workers, whether aliens or other injured  
11 workers, who are not residing in the United States at the time of  
12 receiving the services, shall be charged or paid at a rate or rates  
13 exceeding those specified in such fee schedule, and no contract  
14 providing for greater fees shall be valid as to the excess. The  
15 establishment of such a schedule, exclusive of conversion factors, does  
16 not constitute "agency action" as used in RCW 34.05.010(3), nor does  
17 such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

18 (3) The director or self-insurer, as the case may be, shall make a  
19 record of the commencement of every disability and the termination  
20 thereof and, when bills are rendered for the care and treatment of  
21 injured workers, shall approve and pay those which conform to the  
22 adopted rules, regulations, established fee schedules, and practices of  
23 the director and may reject any bill or item thereof incurred in  
24 violation of the principles laid down in this section or the rules,  
25 regulations, or the established fee schedules and rules and regulations  
26 adopted under it.

27 **Sec. 3.** RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended  
28 to read as follows:

29 In all hearings, actions or proceedings before the department or  
30 the board of industrial insurance appeals, or before any court on  
31 appeal from the board, any physician or licensed advanced registered  
32 nurse practitioner having theretofore examined or treated the claimant  
33 may be required to testify fully regarding such examination or  
34 treatment, and shall not be exempt from so testifying by reason of the  
35 relation of the physician or licensed advanced registered nurse  
36 practitioner to patient.

1       **Sec. 4.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read  
2 as follows:

3       (1) Whenever any accident occurs to any worker it shall be the duty  
4 of such worker or someone in his or her behalf to forthwith report such  
5 accident to his or her employer, superintendent, or supervisor in  
6 charge of the work, and of the employer to at once report such accident  
7 and the injury resulting therefrom to the department pursuant to RCW  
8 51.28.025 where the worker has received treatment from a physician or  
9 a licensed advanced registered nurse practitioner, has been  
10 hospitalized, disabled from work, or has died as the apparent result of  
11 such accident and injury.

12       (2) Upon receipt of such notice of accident, the department shall  
13 immediately forward to the worker or his or her beneficiaries or  
14 dependents notification, in nontechnical language, of their rights  
15 under this title. The notice must specify the worker's right to  
16 receive health services from a physician or a licensed advanced  
17 registered nurse practitioner of the worker's choice under RCW  
18 51.36.010, including chiropractic services under RCW 51.36.015, and  
19 must list the types of providers authorized to provide these services.

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

22       (1)(a) Where a worker is entitled to compensation under this title  
23 he or she shall file with the department or his or her self-insured  
24 employer, as the case may be, his or her application for such, together  
25 with the certificate of the physician or licensed advanced registered  
26 nurse practitioner who attended him or her. An application form  
27 developed by the department shall include a notice specifying the  
28 worker's right to receive health services from a physician or licensed  
29 advanced registered nurse practitioner of the worker's choice under RCW  
30 51.36.010, including chiropractic services under RCW 51.36.015, and  
31 listing the types of providers authorized to provide these services.

32       (b) The physician or licensed advanced registered nurse  
33 practitioner who attended the injured worker shall inform the injured  
34 worker of his or her rights under this title and lend all necessary  
35 assistance in making this application for compensation and such proof  
36 of other matters as required by the rules of the department without  
37 charge to the worker. The department shall provide physicians with a

1 manual which outlines the procedures to be followed in applications for  
2 compensation involving occupational diseases, and which describes  
3 claimants' rights and responsibilities related to occupational disease  
4 claims.

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

8 **Sec. 6.** RCW 51.28.025 and 1987 c 185 s 32 are each amended to read  
9 as follows:

10 (1) Whenever an employer has notice or knowledge of an injury or  
11 occupational disease sustained by any worker in his or her employment  
12 who has received treatment from a physician or a licensed advanced  
13 registered nurse practitioner, has been hospitalized, disabled from  
14 work or has died as the apparent result of such injury or occupational  
15 disease, the employer shall immediately report the same to the  
16 department on forms prescribed by it. The report shall include:

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

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

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

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

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

28 (f) Such other pertinent information as the department may  
29 prescribe by regulation.

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

35 **Sec. 7.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended to  
36 read as follows:

1 Where death results from injury the parties entitled to  
2 compensation under this title, or someone in their behalf, shall make  
3 application for the same to the department or self-insurer as the case  
4 may be, which application must be accompanied with proof of death and  
5 proof of relationship showing the parties to be entitled to  
6 compensation under this title, certificates of attending physician or  
7 licensed advanced registered nurse practitioner, if any, and such proof  
8 as required by the rules of the department.

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

13 **Sec. 8.** RCW 51.28.055 and 1984 c 159 s 2 are each amended to read  
14 as follows:

15 Claims for occupational disease or infection to be valid and  
16 compensable must be filed within two years following the date the  
17 worker had written notice from a physician or a licensed advanced  
18 registered nurse practitioner: (1) Of the existence of his or her  
19 occupational disease, and (2) that a claim for disability benefits may  
20 be filed. The notice shall also contain a statement that the worker  
21 has two years from the date of the notice to file a claim. The  
22 physician or licensed advanced registered nurse practitioner shall file  
23 the notice with the department. The department shall send a copy to  
24 the worker and to the self-insurer if the worker's employer is self-  
25 insured. However, a claim is valid if it is filed within two years  
26 from the date of death of the worker suffering from an occupational  
27 disease.

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 51.28 RCW  
29 to read as follows:

30 Physician assistants practicing with physician supervision as  
31 required by chapters 18.57A and 18.71A RCW may assist the worker in  
32 filing an application for benefits under this title pursuant to RCW  
33 51.28.020 when a worker presents with a simple industrial injury. Such  
34 claims are identified by criteria specified in rule including, but not  
35 limited to, diagnosis code and whether the worker is expected to miss  
36 time from work. However, a physician assistant shall not be permitted



1 to rate a worker's permanent partial disability under RCW 51.32.080, or  
2 determine entitlement to death benefits under RCW 51.32.050, permanent  
3 total disability benefits under RCW 51.32.060, or temporary total  
4 disability, partial restoration of earning power, and return to work  
5 benefits under RCW 51.32.090. The department may adopt rules necessary  
6 to implement this section.

7 **Sec. 10.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read  
8 as follows:

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

15 (2) All determinations of permanent disabilities shall be made by  
16 the department, except as otherwise authorized in subsection (9) of  
17 this section. Either the worker, employer, or self-insurer may make a  
18 request or the inquiry may be initiated by the director or, as  
19 authorized in subsection (9) of this section, by the self-insurer on  
20 the director or the self-insurer's own motion. Determinations shall be  
21 required in every instance where permanent disability is likely to be  
22 present. All medical reports and other pertinent information in the  
23 possession of or under the control of the employer or, if the self-  
24 insurer has made a request to the department, in the possession of or  
25 under the control of the self-insurer shall be forwarded to the  
26 director with the request.

27 (3) A request for determination of permanent disability shall be  
28 examined by the department or, if authorized in subsection (9) of this  
29 section, the self-insurer, and the department shall issue an order in  
30 accordance with RCW 51.52.050 or, in the case of a self-insured  
31 employer, the self-insurer may: (a) Enter a written order,  
32 communicated to the worker and the department self-insurance section in  
33 accordance with subsection (9) of this section, or (b) request the  
34 department to issue an order in accordance with RCW 51.52.050.

35 (4) The department or, in cases authorized in subsection (9) of  
36 this section, the self-insurer may require that the worker present  
37 himself or herself for a special medical examination by a physician or

1 physicians selected by the department, and the department or, in cases  
2 authorized in subsection (9) of this section, the self-insurer may  
3 require that the worker present himself or herself for a personal  
4 interview. The costs of the examination or interview, including  
5 payment of any reasonable travel expenses, shall be paid by the  
6 department or self-insurer, as the case may be.

7 (5) The director may establish a medical bureau within the  
8 department to perform medical examinations under this section.  
9 Physicians hired or retained for this purpose shall be grounded in  
10 industrial medicine and in the assessment of industrial physical  
11 impairment. Self-insurers shall bear a proportionate share of the cost  
12 of the medical bureau in a manner to be determined by the department.

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

19 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,  
20 1986, and before August 1, 1997, (ii) involves only medical treatment  
21 and the payment of temporary disability compensation under RCW  
22 51.32.090 or only the payment of temporary disability compensation  
23 under RCW 51.32.090, (iii) at the time medical treatment is concluded  
24 does not involve permanent disability, (iv) is one with respect to  
25 which the department has not intervened under subsection (6) of this  
26 section, and (v) the injured worker has returned to work with the self-  
27 insured employer of record, whether at the worker's previous job or at  
28 a job that has comparable wages and benefits, the claim may be closed  
29 by the self-insurer, subject to reporting of claims to the department  
30 in a manner prescribed by department rules adopted under chapter 34.05  
31 RCW.

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

36 (c) Upon closure of a claim under (a) of this subsection, the self-  
37 insurer shall enter a written order, communicated to the worker and the  
38 department self-insurance section, which contains the following

1 statement clearly set forth in bold face type: "This order constitutes  
2 notification that your claim is being closed with medical benefits and  
3 temporary disability compensation only as provided, and with the  
4 condition you have returned to work with the self-insured employer. If  
5 for any reason you disagree with the conditions or duration of your  
6 return to work or the medical benefits or the temporary disability  
7 compensation that has been provided, you must protest in writing to the  
8 department of labor and industries, self-insurance section, within  
9 sixty days of the date you received this order."

10 (8)(a) If a claim (i) is accepted by a self-insurer after June 30,  
11 1990, and before August 1, 1997, (ii) involves only medical treatment,  
12 (iii) does not involve payment of temporary disability compensation  
13 under RCW 51.32.090, and (iv) at the time medical treatment is  
14 concluded does not involve permanent disability, the claim may be  
15 closed by the self-insurer, subject to reporting of claims to the  
16 department in a manner prescribed by department rules adopted under  
17 chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall  
18 enter a written order, communicated to the worker, which contains the  
19 following statement clearly set forth in bold-face type: "This order  
20 constitutes notification that your claim is being closed with medical  
21 benefits only, as provided. If for any reason you disagree with this  
22 closure, you must protest in writing to the Department of Labor and  
23 Industries, Olympia, within 60 days of the date you received this  
24 order. The department will then review your claim and enter a further  
25 determinative order."

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

30 (9)(a) If a claim: (i) Is accepted by a self-insurer after July  
31 31, 1997; (ii)(A) involves only medical treatment, or medical treatment  
32 and the payment of temporary disability compensation under RCW  
33 51.32.090, and a determination of permanent partial disability, if  
34 applicable, has been made by the self-insurer as authorized in this  
35 subsection; or (B) involves only the payment of temporary disability  
36 compensation under RCW 51.32.090 and a determination of permanent  
37 partial disability, if applicable, has been made by the self-insurer as  
38 authorized in this subsection; (iii) is one with respect to which the

1 department has not intervened under subsection (6) of this section; and  
2 (iv) concerns an injured worker who has returned to work with the self-  
3 insured employer of record, whether at the worker's previous job or at  
4 a job that has comparable wages and benefits, the claim may be closed  
5 by the self-insurer, subject to reporting of claims to the department  
6 in a manner prescribed by department rules adopted under chapter 34.05  
7 RCW.

8 (b) If a physician or licensed advanced registered nurse  
9 practitioner submits a report to the self-insurer that concludes that  
10 the worker's condition is fixed and stable and supports payment of a  
11 permanent partial disability award, and if within fourteen days from  
12 the date the self-insurer mailed the report to the attending or  
13 treating physician or licensed advanced registered nurse practitioner,  
14 the worker's attending or treating physician or licensed advanced  
15 registered nurse practitioner disagrees in writing that the worker's  
16 condition is fixed and stable, the self-insurer must get a supplemental  
17 medical opinion from a provider on the department's approved examiner's  
18 list before closing the claim. In the alternative, the self-insurer  
19 may forward the claim to the department, which must review the claim  
20 and enter a final order as provided for in RCW 51.52.050.

21 (c) Upon closure of a claim under this subsection (9), the self-  
22 insurer shall enter a written order, communicated to the worker and the  
23 department self-insurance section, which contains the following  
24 statement clearly set forth in bold-face type: "This order constitutes  
25 notification that your claim is being closed with such medical benefits  
26 and temporary disability compensation as provided to date and with such  
27 award for permanent partial disability, if any, as set forth below, and  
28 with the condition that you have returned to work with the self-insured  
29 employer. If for any reason you disagree with the conditions or  
30 duration of your return to work or the medical benefits, temporary  
31 disability compensation provided, or permanent partial disability that  
32 has been awarded, you must protest in writing to the Department of  
33 Labor and Industries, Self-Insurance Section, within sixty days of the  
34 date you received this order. If you do not protest this order to the  
35 department, this order will become final."

36 (d) All determinations of permanent partial disability for claims  
37 accepted by self-insurers under this subsection (9) may be made by the

1 self-insurer or the self-insurer may request a determination by the  
2 self-insured section of the department. All determinations shall be  
3 made under subsections (1) through (4) of this section.

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

12 (11) If within two years of claim closure under subsections (7)  
13 through (9) of this section, the department determines that the self-  
14 insurer has made payment of benefits because of clerical error, mistake  
15 of identity, or innocent misrepresentation or the department discovers  
16 a violation of the conditions of claim closure, the department may  
17 require the self-insurer to correct the benefits paid or payable. This  
18 subsection (11) does not limit in any way the application of RCW  
19 51.32.240.

20 (12) For the purposes of this section, "comparable wages and  
21 benefits" means wages and benefits that are at least ninety-five  
22 percent of the wages and benefits received by the worker at the time of  
23 injury.

24 **Sec. 11.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and  
25 1993 c 271 s 1 are each reenacted and amended to read as follows:

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

29 (2) Any compensation payable under this section for children not in  
30 the custody of the injured worker as of the date of injury shall be  
31 payable only to such person as actually is providing the support for  
32 such child or children pursuant to the order of a court of record  
33 providing for support of such child or children.

34 (3)(a) As soon as recovery is so complete that the present earning  
35 power of the worker, at any kind of work, is restored to that existing  
36 at the time of the occurrence of the injury, the payments shall cease.

1 If and so long as the present earning power is only partially restored,  
2 the payments shall:

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

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

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

18 (4)(a) Whenever the employer of injury requests that a worker who  
19 is entitled to temporary total disability under this chapter be  
20 certified by a physician or licensed advanced registered nurse  
21 practitioner as able to perform available work other than his or her  
22 usual work, the employer shall furnish to the physician or licensed  
23 advanced registered nurse practitioner, with a copy to the worker, a  
24 statement describing the work available with the employer of injury in  
25 terms that will enable the physician or licensed advanced registered  
26 nurse practitioner to relate the physical activities of the job to the  
27 worker's disability. The physician or licensed advanced registered  
28 nurse practitioner shall then determine whether the worker is  
29 physically able to perform the work described. The worker's temporary  
30 total disability payments shall continue until the worker is released  
31 by his or her physician or licensed advanced registered nurse  
32 practitioner for the work, and begins the work with the employer of  
33 injury. If the work thereafter comes to an end before the worker's  
34 recovery is sufficient in the judgment of his or her physician or  
35 licensed advanced registered nurse practitioner to permit him or her to  
36 return to his or her usual job, or to perform other available work  
37 offered by the employer of injury, the worker's temporary total  
38 disability payments shall be resumed. Should the available work

1 described, once undertaken by the worker, impede his or her recovery to  
2 the extent that in the judgment of his or her physician or licensed  
3 advanced registered nurse practitioner he or she should not continue to  
4 work, the worker's temporary total disability payments shall be resumed  
5 when the worker ceases such work.

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

11 (c) If the worker returns to work under this subsection (4), any  
12 employee health and welfare benefits that the worker was receiving at  
13 the time of injury shall continue or be resumed at the level provided  
14 at the time of injury. Such benefits shall not be continued or resumed  
15 if to do so is inconsistent with the terms of the benefit program, or  
16 with the terms of the collective bargaining agreement currently in  
17 force.

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

21 (5) No worker shall receive compensation for or during the day on  
22 which injury was received or the three days following the same, unless  
23 his or her disability shall continue for a period of fourteen  
24 consecutive calendar days from date of injury: PROVIDED, That attempts  
25 to return to work in the first fourteen days following the injury shall  
26 not serve to break the continuity of the period of disability if the  
27 disability continues fourteen days after the injury occurs.

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

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

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

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

9 **Sec. 12.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
10 as follows:

11 (1) One of the primary purposes of this title is to enable the  
12 injured worker to become employable at gainful employment. To this  
13 end, the department or self-insurers shall utilize the services of  
14 individuals and organizations, public or private, whose experience,  
15 training, and interests in vocational rehabilitation and retraining  
16 qualify them to lend expert assistance to the supervisor of industrial  
17 insurance in such programs of vocational rehabilitation as may be  
18 reasonable to make the worker employable consistent with his or her  
19 physical and mental status. Where, after evaluation and recommendation  
20 by such individuals or organizations and prior to final evaluation of  
21 the worker's permanent disability and in the sole opinion of the  
22 supervisor or supervisor's designee, whether or not medical treatment  
23 has been concluded, vocational rehabilitation is both necessary and  
24 likely to enable the injured worker to become employable at gainful  
25 employment, the supervisor or supervisor's designee may, in his or her  
26 sole discretion, pay or, if the employer is a self-insurer, direct the  
27 self-insurer to pay the cost as provided in subsection (3) of this  
28 section.

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

- 33 (a) Return to the previous job with the same employer;
- 34 (b) Modification of the previous job with the same employer
- 35 including transitional return to work;



- 1 (c) A new job with the same employer in keeping with any
  - 2 limitations or restrictions;
  - 3 (d) Modification of a new job with the same employer including
  - 4 transitional return to work;
  - 5 (e) Modification of the previous job with a new employer;
  - 6 (f) A new job with a new employer or self-employment based upon
  - 7 transferable skills;
  - 8 (g) Modification of a new job with a new employer;
  - 9 (h) A new job with a new employer or self-employment involving on-
  - 10 the-job training;
  - 11 (i) Short-term retraining and job placement.
- 12 (3)(a) Except as provided in (b) of this subsection, costs for
- 13 vocational rehabilitation benefits allowed by the supervisor or
- 14 supervisor's designee under subsection (1) of this section may include
- 15 the cost of books, tuition, fees, supplies, equipment, transportation,
- 16 child or dependent care, and other necessary expenses for any such
- 17 worker in an amount not to exceed three thousand dollars in any fifty-
- 18 two week period except as authorized by RCW 51.60.060, and the cost of
- 19 continuing the temporary total disability compensation under RCW
- 20 51.32.090 while the worker is actively and successfully undergoing a
- 21 formal program of vocational rehabilitation.
- 22 (b) Beginning with vocational rehabilitation plans approved on or
- 23 after July 1, 1999, costs for vocational rehabilitation benefits
- 24 allowed by the supervisor or supervisor's designee under subsection (1)
- 25 of this section may include the cost of books, tuition, fees, supplies,
- 26 equipment, child or dependent care, and other necessary expenses for
- 27 any such worker in an amount not to exceed four thousand dollars in any
- 28 fifty-two week period except as authorized by RCW 51.60.060, and the
- 29 cost of transportation and continuing the temporary total disability
- 30 compensation under RCW 51.32.090 while the worker is actively and
- 31 successfully undergoing a formal program of vocational rehabilitation.
- 32 (c) The expenses allowed under (a) or (b) of this subsection may
- 33 include training fees for on-the-job training and the cost of
- 34 furnishing tools and other equipment necessary for self-employment or
- 35 reemployment. However, compensation or payment of retraining with job
- 36 placement expenses under (a) or (b) of this subsection may not be
- 37 authorized for a period of more than fifty-two weeks, except that such

1 period may, in the sole discretion of the supervisor after his or her  
2 review, be extended for an additional fifty-two weeks or portion  
3 thereof by written order of the supervisor.

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

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

10 (4) In addition to the vocational rehabilitation expenditures  
11 provided for under subsection (3) of this section, an additional five  
12 thousand dollars may, upon authorization of the supervisor or the  
13 supervisor's designee, be expended for: (a) Accommodations for an  
14 injured worker that are medically necessary for the worker to  
15 participate in an approved retraining plan; and (b) accommodations  
16 necessary to perform the essential functions of an occupation in which  
17 an injured worker is seeking employment, consistent with the retraining  
18 plan or the recommendations of a vocational evaluation. The injured  
19 worker's attending physician or licensed advanced registered nurse  
20 practitioner must verify the necessity of the modifications or  
21 accommodations. The total expenditures authorized in this subsection  
22 and the expenditures authorized under RCW 51.32.250 shall not exceed  
23 five thousand dollars.

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

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

32 (7) The benefits in this section shall be provided for the injured  
33 workers of self-insured employers. Self-insurers shall report both  
34 benefits provided and benefits denied under this section in the manner  
35 prescribed by the department by rule adopted under chapter 34.05 RCW.  
36 The director may, in his or her sole discretion and upon his or her own  
37 initiative or at any time that a dispute arises under this section,

1 promptly make such inquiries as circumstances require and take such  
2 other action as he or she considers will properly determine the matter  
3 and protect the rights of the parties.

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

8 **Sec. 13.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read  
9 as follows:

10 Upon the occurrence of any injury to a worker entitled to  
11 compensation under the provisions of this title, he or she shall  
12 receive proper and necessary medical and surgical services at the hands  
13 of a physician or licensed advanced registered nurse practitioner of  
14 his or her own choice, if conveniently located, and proper and  
15 necessary hospital care and services during the period of his or her  
16 disability from such injury, but the same shall be limited in point of  
17 duration as follows:

18 In the case of permanent partial disability, not to extend beyond  
19 the date when compensation shall be awarded him or her, except when the  
20 worker returned to work before permanent partial disability award is  
21 made, in such case not to extend beyond the time when monthly  
22 allowances to him or her shall cease; in case of temporary disability  
23 not to extend beyond the time when monthly allowances to him or her  
24 shall cease: PROVIDED, That after any injured worker has returned to  
25 his or her work his or her medical and surgical treatment may be  
26 continued if, and so long as, such continuation is deemed necessary by  
27 the supervisor of industrial insurance to be necessary to his or her  
28 more complete recovery; in case of a permanent total disability not to  
29 extend beyond the date on which a lump sum settlement is made with him  
30 or her or he or she is placed upon the permanent pension roll:  
31 PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely  
32 in his or her discretion, may authorize continued medical and surgical  
33 treatment for conditions previously accepted by the department when  
34 such medical and surgical treatment is deemed necessary by the  
35 supervisor of industrial insurance to protect such worker's life or  
36 provide for the administration of medical and therapeutic measures  
37 including payment of prescription medications, but not including those

1 controlled substances currently scheduled by the state board of  
2 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50  
3 RCW, which are necessary to alleviate continuing pain which results  
4 from the industrial injury. In order to authorize such continued  
5 treatment the written order of the supervisor of industrial insurance  
6 issued in advance of the continuation shall be necessary.

7 The supervisor of industrial insurance, the supervisor's designee,  
8 or a self-insurer, in his or her sole discretion, may authorize  
9 inoculation or other immunological treatment in cases in which a work-  
10 related activity has resulted in probable exposure of the worker to a  
11 potential infectious occupational disease. Authorization of such  
12 treatment does not bind the department or self-insurer in any  
13 adjudication of a claim by the same worker or the worker's beneficiary  
14 for an occupational disease.

15 **Sec. 14.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read  
16 as follows:

17 Physicians or licensed advanced registered nurse practitioners  
18 examining or attending injured workers under this title shall comply  
19 with rules and regulations adopted by the director, and shall make such  
20 reports as may be requested by the department or self-insurer upon the  
21 condition or treatment of any such worker, or upon any other matters  
22 concerning such workers in their care. Except under RCW 49.17.210 and  
23 49.17.250, all medical information in the possession or control of any  
24 person and relevant to the particular injury in the opinion of the  
25 department pertaining to any worker whose injury or occupational  
26 disease is the basis of a claim under this title shall be made  
27 available at any stage of the proceedings to the employer, the  
28 claimant's representative, and the department upon request, and no  
29 person shall incur any legal liability by reason of releasing such  
30 information.

31 **Sec. 15.** RCW 51.36.110 and 1994 c 154 s 312 are each amended to  
32 read as follows:

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

- 35 (1) Conduct audits and investigations of providers of medical,  
36 chiropractic, dental, vocational, and other health services furnished

1 to industrially injured workers pursuant to Title 51 RCW. In the  
2 conduct of such audits or investigations, the director or the  
3 director's authorized representatives may examine all records, or  
4 portions thereof, including patient records, for which services were  
5 rendered by a health services provider and reimbursed by the  
6 department, notwithstanding the provisions of any other statute which  
7 may make or purport to make such records privileged or confidential:  
8 PROVIDED, That no original patient records shall be removed from the  
9 premises of the health services provider, and that the disclosure of  
10 any records or information obtained under authority of this section by  
11 the department of labor and industries is prohibited and constitutes a  
12 violation of RCW 42.52.050, unless such disclosure is directly  
13 connected to the official duties of the department: AND PROVIDED  
14 FURTHER, That the disclosure of patient information as required under  
15 this section shall not subject any physician, licensed advanced  
16 registered nurse practitioner, or other health services provider to any  
17 liability for breach of any confidential relationships between the  
18 provider and the patient: AND PROVIDED FURTHER, That the director or  
19 the director's authorized representative shall destroy all copies of  
20 patient medical records in their possession upon completion of the  
21 audit, investigation, or proceedings;

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

25 (3) Terminate or suspend eligibility to participate as a provider  
26 of services furnished to industrially injured workers pursuant to Title  
27 51 RCW.

28 A provider may appeal any action, decision, or order by the  
29 director or the director's authorized representative under this  
30 section. Proceedings during the appeal shall be as prescribed in this  
31 title. Any order terminating or suspending a provider's eligibility to  
32 render services to industrially injured workers pursuant to this  
33 section shall become effective thirty days after the date the  
34 department order is communicated to the provider. An appeal by a  
35 provider shall not act as a stay of the action unless the board or  
36 court, for good cause shown, orders otherwise.

1       **Sec. 16.** RCW 51.36.110 and 1994 c 154 s 312 are each amended to  
2 read as follows:

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

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

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

30       (3) Terminate or suspend eligibility to participate as a provider  
31 of services furnished to industrially injured workers pursuant to Title  
32 51 RCW.

33       A provider may appeal any action, decision, or order by the  
34 director or the director's authorized representative under this  
35 section. Proceedings during the appeal shall be as prescribed in this  
36 title. Any order terminating or suspending a provider's eligibility to  
37 render services to industrially injured workers pursuant to this  
38 section shall become effective thirty days after the date the

1 department order is communicated to the provider. An appeal by a  
2 provider shall not act as a stay of the action unless the board or  
3 court, for good cause shown, orders otherwise.

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

6 Any physician or licensed advanced registered nurse practitioner  
7 who fails, neglects or refuses to file a report with the director, as  
8 required by this title, within five days of the date of treatment,  
9 showing the condition of the injured worker at the time of treatment,  
10 a description of the treatment given, and an estimate of the probable  
11 duration of the injury, or who fails or refuses to render all necessary  
12 assistance to the injured worker, as required by this title, shall be  
13 subject to a civil penalty determined by the director but not to exceed  
14 two hundred fifty dollars.

15 **Sec. 18.** RCW 51.52.010 and 1999 c 149 s 1 are each amended to read  
16 as follows:

17 There shall be a "board of industrial insurance appeals,"  
18 hereinafter called the "board," consisting of three members appointed  
19 by the governor, with the advice and consent of the senate, as  
20 hereinafter provided. One shall be a representative of the public and  
21 a lawyer, appointed from a mutually agreed to list of not less than  
22 three active members of the Washington state bar association, submitted  
23 to the governor by the two organizations defined below, and such member  
24 shall be the chairperson of said board. The second member shall be a  
25 representative of the majority of workers engaged in employment under  
26 this title and selected from a list of not less than three names  
27 submitted to the governor by an organization, statewide in scope, which  
28 through its affiliates embraces a cross section and a majority of the  
29 organized labor of the state. The third member shall be a  
30 representative of employers under this title, and appointed from a list  
31 of at least three names submitted to the governor by a recognized  
32 statewide organization of employers, representing a majority of  
33 employers. The initial terms of office of the members of the board  
34 shall be for six, four, and two years respectively. Thereafter all  
35 terms shall be for a period of six years. Each member of the board  
36 shall be eligible for reappointment and shall hold office until his or

1 her successor is appointed and qualified. In the event of a vacancy  
2 the governor is authorized to appoint a successor to fill the unexpired  
3 term of his or her predecessor. All appointments to the board shall be  
4 made in conformity with the foregoing plan. In the event a board  
5 member becomes incapacitated in excess of thirty days either due to his  
6 or her illness or that of an immediate family member as determined by  
7 a request for family leave or as certified by the affected member's  
8 treating physician or licensed advanced registered nurse practitioner,  
9 the governor shall appoint an acting member to serve pro tem. Such an  
10 appointment shall be made in conformity with the foregoing plan, except  
11 that the list of candidates shall be submitted to the governor not more  
12 than fifteen days after the affected organizations are notified of the  
13 incapacity and the governor shall make the appointment within fifteen  
14 days after the list is submitted. The temporary member shall serve  
15 until such time as the affected member is able to reassume his or her  
16 duties by returning from requested family leave or as determined by the  
17 treating physician or licensed advanced registered nurse practitioner  
18 or until the affected member's term expires, whichever occurs first.  
19 Whenever the workload of the board and its orderly and expeditious  
20 disposition shall necessitate, the governor may appoint two additional  
21 pro-tem members in addition to the regular members. Such appointments  
22 shall be for a definite period of time, and shall be made from lists  
23 submitted respectively by labor and industry as in the case of regular  
24 members. One pro-tem member shall be a representative of labor and one  
25 shall be a representative of industry. Members shall devote their  
26 entire time to the duties of the board and shall receive for their  
27 services a salary as fixed by the governor in accordance with the  
28 provisions of RCW 43.03.040 which shall be in addition to travel  
29 expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing  
30 or hereafter amended. Headquarters for the board shall be located in  
31 Olympia. The board shall adopt a seal which shall be judicially  
32 recognized.

33 NEW SECTION. **Sec. 19.** A new section is added to chapter 51.36 RCW  
34 to read as follows:

35 Licensed advanced registered nurse practitioners are recognized as  
36 independent practitioners and, subject to the provisions of this title,



1 the health services available to an injured worker under RCW 51.36.010  
2 include health services provided by licensed advanced registered nurse  
3 practitioners within their scope of practice.

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

10 NEW SECTION. **Sec. 21.** Sections 1, 3 through 15, and 17 through 20  
11 of this act expire June 30, 2006.

12 NEW SECTION. **Sec. 22.** Sections 1, 3 through 15, and 17 through 20  
13 of this act are necessary for the immediate preservation of the public  
14 peace, health, or safety, or support of the state government and its  
15 existing public institutions, and take effect July 1, 2003.

16 NEW SECTION. **Sec. 23.** Sections 2 and 16 of this act take effect  
17 June 30, 2006.

18 NEW SECTION. **Sec. 24.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

--- END ---