

SHB 1487 - H AMD 383

By Representative Springer

ADOPTED 03/05/2011

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

3
4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.18
5 RCW to read as follows:

6 (1) In addition to those general powers and rights deemed
7 appropriate by the department, retrospective rating plan employers and
8 groups who administer their plans with an approved claims
9 administrator shall have the authority to assist the department in the
10 processing of claims when approved by the department. However, the
11 department retains the final authority over decisions with respect to
12 any individual claim. Under this authority, retrospective rating plan
13 employers and groups may do any or all of the following:

14 (a) Schedule medical examinations and consultations, using only
15 qualified persons from the department's approved examiner list. No
16 more than two independent medical examinations for each claim may be
17 scheduled by the claims administrator within any twenty-four month
18 period. An independent medical examination may be scheduled when the
19 claim file includes medical reports indicating that an examination may
20 be necessary for any of the following reasons: Establishing a
21 diagnosis, outlining a program of treatment, evaluating what, if any,
22 conditions are related to the claimed industrial injury or
23 occupational disease, determining whether an industrial injury or
24 occupational disease has aggravated a preexisting condition,
25 establishing an impairment rating when the claim file medical reports
26 indicate that the worker's claim-related condition is at maximum
27 medical improvement, evaluating whether the industrial injury or

1 occupational disease has worsened, or evaluating the worker's mental
2 or physical restrictions as well as the worker's ability to work. The
3 results of any independent medical examination scheduled under this
4 subsection must be sent by the examiner or independent medical
5 examination panel directly to the department for the claimant's claim
6 file. The department shall enforce penalties under RCW 51.32.110 for
7 refusals to submit to medical examinations scheduled by retrospective
8 rating plan employers or groups or obstruction of the same.

9 (b) Schedule vocational assessments using only qualified providers
10 from a qualified provider list developed by the department. Providers
11 may be selected based on department quality or performance indicators
12 and based on industry experience. Any vocational assessment resulting
13 from a referral under this section must be sent by the vocational
14 rehabilitation counselor directly to the department for the claimant's
15 claim file.

16 (c) Close claims as provided by this subsection. Closure of
17 claims shall be conducted under the standards and procedures as
18 provided in this title, except as provided in this section. If a
19 claim with date of injury or manifestation of occupational disease
20 on or after January 1, 2012: (i) Involves only medical treatment
21 and/or the payment of temporary disability compensation under RCW
22 51.32.090 for a period of thirty days or less; (ii) at the time
23 medical treatment is concluded, does not involve permanent
24 disability; (iii) is one with respect to which the department has
25 not intervened under subsection (2) of this section; and (iv)
26 concerns an injured worker who has returned to work with the
27 retrospective rating plan employer or employer within the group at
28 the worker's previous job or at a job that has at least ninety-five
29 percent of at-injury wages as calculated under RCW 51.08.178, the
30 claim may be closed by the retrospective rating plan employer or
31 group, subject to reporting of claims to the department in a manner
32 prescribed by department rules adopted under chapter 34.05 RCW. No
33 later than at the time of closure for such claims, the retrospective
34 rating plan employer or group shall issue and send to the department

1 and the worker a written order and forward to the worker a
2 notification developed by the department describing in nontechnical
3 language the worker's rights under this title.

4 (2) If a dispute arises from the handling of any claim under this
5 section, the injured worker, or retrospective rating plan employer or
6 group, may request the department to intervene. When exercising any
7 authority under subsection (1) of this section, a retrospective rating
8 plan employer or group must inform a worker in writing that the worker
9 may request the department to intervene at any time.

10 (3) The department shall require the retrospective rating plan
11 employer or group to notify the department prior to exercising any
12 authority authorized by this section. Rules adopted under this
13 section must minimize the department's need to respond and ensure that
14 any delay in response by the department does not impede the timely
15 administration of the claim. Charges incurred by the retrospective
16 rating plan employer or group for independent medical examinations or
17 vocational rehabilitation assessments shall be charged against the
18 claim.

19 (4) For the purposes of this section, "approved claims
20 administrator" means a person who meets department qualifications to
21 manage industrial insurance claims for retrospective rating plan
22 employers and groups. Any claims managers employed by the approved
23 claims administrator to manage retrospective rating plan claims must
24 pass a certification test approved by the department as established in
25 rule. The department may audit or review the claims management
26 process of a retrospective rating plan employer or group that has
27 received authority to assist the department with the processing of
28 claims. The director shall take corrective action, subject to appeal
29 to the board of industrial insurance appeals, against a retrospective
30 rating plan employer or group, if the director determines that a
31 claims manager under its direction is not following proper industrial
32 insurance claims procedures. Corrective actions taken by the director
33 may include:

34 (a) Probationary period of time for the claims manager;

1 (b) Additional mandatory training for claims management personnel;
2 and

3 (c) Monitoring of the activities of the employer or group to
4 determine progress towards compliance.

5 The director shall adopt rules defining the corrective actions
6 which may be taken in response to a given condition. If the director
7 determines that compliance has been attained, no further action shall
8 be taken. If compliance has not been attained, the director may take
9 additional corrective action including the removal of the additional
10 authority to assist the department in the processing of claims under
11 this section. The withdrawal of approval revokes the ability of the
12 approved claims administrator to exercise authority under this
13 section, but does not otherwise affect the administrator's status or
14 the retrospective rating plan employer or group's status in the
15 retrospective rating program.

16 (5) The department may adopt rules to implement this section.

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18 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.18 RCW
19 to read as follows:

20 Payment by an employer for direct primary care services as defined
21 in RCW 48.150.010 does not disqualify: (1) An employer from
22 participating in the retrospective rating plan; (2) a group sponsor
23 from promoting a retrospective rating plan; or (3) a plan
24 administrator from administering a retrospective rating plan. The
25 department may adopt rules requiring a direct practice to provide such
26 information as the department requires to establish refunds or
27 assessments for employers or groups under this chapter. Any billing
28 rule requiring a provider to bill for services does not apply to a
29 direct practice. For purposes of this section, "direct practice"
30 shall have the meaning in RCW 48.150.010.

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32 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 to
33 read as follows:

1 (1) When a retrospective rating plan employer or group or its
2 representative communicates with a medical provider, the employer must
3 provide to the worker and send to the claim file a copy of any written
4 communication received and a memorandum describing any oral
5 communication. The copy of the written communication and memorandum
6 describing an oral communication must be provided within seventy-two
7 hours of receiving the information.

8 (2) The information required to be provided under subsection (1)
9 of this section must be provided regardless of the source of the
10 information and any claim of privilege or work product.

11 (3) The employer must send the information required to be provided
12 under subsection (1) of this section to the claim file electronically.
13 If the worker chooses, the information must be sent to the worker
14 electronically.

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16 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.18 RCW
17 to read as follows:

18 A retrospective rating plan employer or group must maintain
19 complete records of all claims administered under this chapter. The
20 records may be maintained by service companies or at an out of state
21 location under conditions and procedures established by the director.
22 The retrospective rating plan employer or group must make the records
23 available for inspection upon request by the department, worker or
24 beneficiary, or their representative within five business days of the
25 request at a a location within the state requested by the department,
26 worker or beneficiary, or representative. The expense of producing
27 the records must be borne by the retrospective rating plan employer or
28 group.

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30 NEW SECTION. **Sec. 5.** The joint legislative audit and review
31 committee shall conduct a study of the impact of section 1 of this act
32 on the state's workers' compensation system, including the impact on
33 the retrospective rating plan performance and refunds, the
34 department's processes, and worker outcomes and satisfaction. The

1 joint legislative audit and review committee shall submit the study to
2 the appropriate committees of the legislature by July 1, 2015.

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4 NEW SECTION. **Sec. 6.** Sections 1 and 4 of this act expire July 1,
5 2016."

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7 Correct the title.

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EFFECT: (1)(a) Provides that retrospective rating plan (retro) employer or group claims management authority is limited to those matters specified in the bill (schedule medical examinations and consultations, schedule vocational assessments, and close certain claims), rather than "includes" those matters. (b) Requires that claim closures be conducted under industrial insurance procedures and standards, except as otherwise provided. (c) Specifies that for purposes of the return to work requirement for claims closure authority, the job must have at least 95 percent of wages as calculated for purposes of industrial insurance. (d) Requires, rather than allows, the Department of Labor and Industries (Department) to require retro employers or groups to notify the Department when exercising claims management authority. (e) Requires claims managers managing retro claims to pass a certification test approved by the Department, rather than complete training. (f) Corrects a cross-reference with respect to the study and moves up the date of the study to July 1, 2015.

(2) Requires a retro employer or group, or its representative, to provide copies of written communications with medical providers and a memorandum describing any oral communication with a medical provider to the worker and the claim file within 72 hours of receiving the information. Requires the information to be sent to the claim file electronically, as well as to the worker, if the worker chooses. Requires the information to be provided regardless of the source and any claim of privilege or work product.

(3) Requires retro employers and groups to maintain complete records of claims. Allows the records to be maintained by service companies or at an out-of-state location under conditions and procedures established by the director. Requires that the records be available for inspection at the request of the department, a worker or beneficiary, or their representative within five business days of the request at a requested location within the state and at the employer or group's expense.

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