

ESHB 1725 - S AMD 403

By Senators Kastama, Holmquist Newbry, Kohl-Welles

ADOPTED 04/21/2011

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

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5 "Sec. 1. RCW 51.04.030 and 2004 c 65 s 1 are each amended to read
6 as follows:

7 (1) The director shall supervise the providing of prompt and
8 efficient care and treatment, including care provided by physician
9 assistants governed by the provisions of chapters 18.57A and 18.71A
10 RCW, acting under a supervising physician, including chiropractic
11 care, and including care provided by licensed advanced registered
12 nurse practitioners, to workers injured during the course of their
13 employment at the least cost consistent with promptness and
14 efficiency, without discrimination or favoritism, and with as great
15 uniformity as the various and diverse surrounding circumstances and
16 locations of industries will permit and to that end shall, from time
17 to time, establish and adopt and supervise the administration of
18 printed forms, rules, regulations, and practices for the furnishing of
19 such care and treatment: PROVIDED, That the medical coverage
20 decisions of the department do not constitute a "rule" as used in RCW
21 34.05.010(16), nor are such decisions subject to the rule-making
22 provisions of chapter 34.05 RCW except that criteria for establishing
23 medical coverage decisions shall be adopted by rule after consultation
24 with the workers' compensation advisory committee established in RCW
25 51.04.110: PROVIDED FURTHER, That the department may recommend to an
26 injured worker particular health care services and providers where
27 specialized treatment is indicated or where cost effective payment

1 levels or rates are obtained by the department: AND PROVIDED FURTHER,
2 That the department may enter into contracts for goods and services
3 including, but not limited to, durable medical equipment so long as
4 statewide access to quality service is maintained for injured workers.

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

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

1 **Sec. 2.** RCW 51.04.082 and 1986 c 9 s 2 are each amended to read
2 as follows:

3 Any notice or order required by this title to be mailed to any
4 employer may be served in the manner prescribed by law for personal
5 service of summons and complaint in the commencement of actions in the
6 superior courts of the state, but if the notice or order is mailed, it
7 shall be addressed to the address of the employer as shown by the
8 records of the department, or, if no such address is shown, to such
9 address as the department is able to ascertain by reasonable effort.
10 If requested by the employer, any notice or order may be sent by
11 secure electronic means except orders communicating the closure of a
12 claim. Correspondence and notices sent electronically are considered
13 received on the date sent by the department. Failure of the employer
14 to receive such notice or order whether served or mailed shall not
15 release the employer from any tax or any increases or penalties
16 thereon.

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18 NEW SECTION. **Sec. 3.** 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 when used for medical services on an allowed
22 industrial injury or occupational disease claim does not disqualify:
23 (1) the employer from participating in a retrospective rating plan; (2)
24 any related group sponsor from promoting a retrospective rating plan;
25 or (3) any related plan administrator from administering a
26 retrospective rating plan, provided the employer or group sponsor or
27 plan administrator provides any medical cost or payment information
28 that may be required by the department. Prior to the first
29 retrospective rating adjustment for the plan year beginning January 1,
30 2012, the department shall determine the information needed and any
31 changes to the retrospective rating premium and claim cost
32 calculations to maintain appropriate and equitable retrospective
33 rating refunds when employers pay for direct primary care services.
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1 These changes shall apply beginning with the January 1, 2012 plan
2 year.

3 The department may adopt rules to implement this section.

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5 **Sec. 4.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read
6 as follows:

7 (1) If the injured worker or beneficiary elects to seek damages
8 from the third person, any recovery made shall be distributed as
9 follows:

10 (a) The costs and reasonable attorneys' fees shall be paid
11 proportionately by the injured worker or beneficiary and the
12 department and/or self-insurer: PROVIDED, That the department and/or
13 self-insurer may require court approval of costs and attorneys' fees
14 or may petition a court for determination of the reasonableness of
15 costs and attorneys' fees;

16 (b) The injured worker or beneficiary shall be paid twenty-five
17 percent of the balance of the award: PROVIDED, That in the event of a
18 compromise and settlement by the parties, the injured worker or
19 beneficiary may agree to a sum less than twenty-five percent;

20 (c) The department and/or self-insurer shall be paid the balance
21 of the recovery made, but only to the extent necessary to reimburse
22 the department and/or self-insurer for benefits paid;

23 (i) The department and/or self-insurer shall bear its
24 proportionate share of the costs and reasonable attorneys' fees
25 incurred by the worker or beneficiary to the extent of the benefits
26 paid under this title: PROVIDED, That the department's and/or self-
27 insurer's proportionate share shall not exceed one hundred percent of
28 the costs and reasonable attorneys' fees;

29 (ii) The department's and/or self-insurer's proportionate share of
30 the costs and reasonable attorneys' fees shall be determined by
31 dividing the gross recovery amount into the benefits paid amount and
32 multiplying this percentage times the costs and reasonable attorneys'
33 fees incurred by the worker or beneficiary;

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1 (iii) The department's and/or self-insurer's reimbursement share
2 shall be determined by subtracting their proportionate share of the
3 costs and reasonable attorneys' fees from the benefits paid amount;

4 (d) Any remaining balance shall be paid to the injured worker or
5 beneficiary; and

6 (e) Thereafter no payment shall be made to or on behalf of a
7 worker or beneficiary by the department and/or self-insurer for such
8 injury until the amount of any further compensation and benefits shall
9 equal any such remaining balance minus the department's and/or self-
10 insurer's proportionate share of the costs and reasonable attorneys'
11 fees in regards to the remaining balance. This proportionate share
12 shall be determined by dividing the gross recovery amount into the
13 remaining balance amount and multiplying this percentage times the
14 costs and reasonable attorneys' fees incurred by the worker or
15 beneficiary. Thereafter, such benefits shall be paid by the
16 department and/or self-insurer to or on behalf of the worker or
17 beneficiary as though no recovery had been made from a third person.

18 (2) The recovery made shall be subject to a lien by the department
19 and/or self-insurer for its share under this section.

20 (3) The department or self-insurer has sole discretion to
21 compromise the amount of its lien. In deciding whether or to what
22 extent to compromise its lien, the department or self-insurer shall
23 consider at least the following:

24 (a) The likelihood of collection of the award or settlement as may
25 be affected by insurance coverage, solvency, or other factors relating
26 to the third person;

27 (b) Factual and legal issues of liability as between the injured
28 worker or beneficiary and the third person. Such issues include but
29 are not limited to possible contributory negligence and novel theories
30 of liability; and

31 (c) Problems of proof faced in obtaining the award or settlement.

32 (4) In an action under this section, the self-insurer may act on
33 behalf and for the benefit of the department to the extent of any
34 compensation and benefits paid or payable from state funds.

1 (5) It shall be the duty of the person to whom any recovery is
2 paid before distribution under this section to advise the department
3 or self-insurer of the fact and amount of such recovery, the costs and
4 reasonable attorneys' fees associated with the recovery, and to
5 distribute the recovery in compliance with this section.

6 (6) The distribution of any recovery made by award or settlement
7 of the third party action shall be confirmed by department order,
8 served by (~~registered or certified mail~~) a method for which receipt
9 can be confirmed or tracked, and shall be subject to chapter 51.52
10 RCW. In the event the order of distribution becomes final under
11 chapter 51.52 RCW, the director or the director's designee may file
12 with the clerk of any county within the state a warrant in the amount
13 of the sum representing the unpaid lien plus interest accruing from
14 the date the order became final. The clerk of the county in which the
15 warrant is filed shall immediately designate a superior court cause
16 number for such warrant and the clerk shall cause to be entered in the
17 judgment docket under the superior court cause number assigned to the
18 warrant, the name of such worker or beneficiary mentioned in the
19 warrant, the amount of the unpaid lien plus interest accrued and the
20 date when the warrant was filed. The amount of such warrant as
21 docketed shall become a lien upon the title to and interest in all
22 real and personal property of the injured worker or beneficiary
23 against whom the warrant is issued, the same as a judgment in a civil
24 case docketed in the office of such clerk. The sheriff shall then
25 proceed in the same manner and with like effect as prescribed by law
26 with respect to execution or other process issued against rights or
27 property upon judgment in the superior court. Such warrant so
28 docketed shall be sufficient to support the issuance of writs of
29 garnishment in favor of the department in the manner provided by law
30 in the case of judgment, wholly or partially unsatisfied. The clerk
31 of the court shall be entitled to a filing fee under RCW
32 36.18.012(10), which shall be added to the amount of the warrant. A
33 copy of such warrant shall be mailed to the injured worker or
34 beneficiary within three days of filing with the clerk.

1 (7) The director, or the director's designee, may issue to any
2 person, firm, corporation, municipal corporation, political
3 subdivision of the state, public corporation, or agency of the state,
4 a notice and order to withhold and deliver property of any kind if he
5 or she has reason to believe that there is in the possession of such
6 person, firm, corporation, municipal corporation, political
7 subdivision of the state, public corporation, or agency of the state,
8 property which is due, owing, or belonging to any worker or
9 beneficiary upon whom a warrant has been served by the department for
10 payments due to the state fund. The notice and order to withhold and
11 deliver shall be served by the sheriff of the county or by the
12 sheriff's deputy; by ~~((certified mail, return receipt requested))~~ a
13 method for which receipt can be confirmed or tracked; or by any
14 authorized representatives of the director. Any person, firm,
15 corporation, municipal corporation, political subdivision of the
16 state, public corporation, or agency of the state upon whom service
17 has been made shall answer the notice within twenty days exclusive of
18 the day of service, under oath and in writing, and shall make true
19 answers to the matters inquired of in the notice and order to withhold
20 and deliver. In the event there is in the possession of the party
21 named and served with such notice and order, any property which may be
22 subject to the claim of the department, such property shall be
23 delivered forthwith to the director or the director's authorized
24 representative upon demand. If the party served and named in the
25 notice and order fails to answer the notice and order within the time
26 prescribed in this section, the court may, after the time to answer
27 such order has expired, render judgment by default against the party
28 named in the notice for the full amount claimed by the director in the
29 notice together with costs. In the event that a notice to withhold
30 and deliver is served upon an employer and the property found to be
31 subject thereto is wages, the employer may assert in the answer to all
32 exemptions provided for by chapter 6.27 RCW to which the wage earner
33 may be entitled.

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1 NEW SECTION. **Sec. 5.** A new section is added to Chapter 51.36 RCW
2 to read as follows:

3 The department shall report to the appropriate committees of the
4 legislature by December 1, 2011 on statutory changes needed to ensure
5 an injured worker may receive care from a health care provider who
6 furnishes primary care services through a direct agreement in
7 compliance with chapter 48.150 RCW and that the injured worker is not
8 paying directly for medical services related to their industrial
9 injury or occupational disease. The report shall provide a timeline
10 for rule development with a goal to have necessary changes in place by
11 July 1, 2013, and include the data required from direct care providers
12 necessary to establish premium rates, experience modification factors,
13 and retrospective rating adjustments; medical cost or payment
14 information that may be required from retrospective rating
15 participants; any requirements specific to direct primary care
16 providers in order for them participate in the statewide medical
17 provider network and to ensure the department has information to
18 efficiently manage worker claims; and any other issues or barriers to
19 participation of direct primary care providers in the workers'
20 compensation system.

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22 **Sec. 6.** RCW 51.32.240 and 2008 c 280 s 2 are each amended to read
23 as follows:

24 (1)(a) Whenever any payment of benefits under this title is made
25 because of clerical error, mistake of identity, innocent
26 misrepresentation by or on behalf of the recipient thereof mistakenly
27 acted upon, or any other circumstance of a similar nature, all not
28 induced by willful misrepresentation, the recipient thereof shall
29 repay it and recoupment may be made from any future payments due to
30 the recipient on any claim with the state fund or self-insurer, as the
31 case may be. The department or self-insurer, as the case may be, must
32 make claim for such repayment or recoupment within one year of the
33 making of any such payment or it will be deemed any claim therefor has
34 been waived.

1 (b) Except as provided in subsections (3), (4), and (5) of this
2 section, the department may only assess an overpayment of benefits
3 because of adjudicator error when the order upon which the overpayment
4 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
5 "Adjudicator error" includes the failure to consider information in
6 the claim file, failure to secure adequate information, or an error in
7 judgment.

8 (c) The director, pursuant to rules adopted in accordance with the
9 procedures provided in the administrative procedure act, chapter 34.05
10 RCW, may exercise his or her discretion to waive, in whole or in part,
11 the amount of any such timely claim where the recovery would be
12 against equity and good conscience.

13 (2) Whenever the department or self-insurer fails to pay benefits
14 because of clerical error, mistake of identity, or innocent
15 misrepresentation, all not induced by recipient willful
16 misrepresentation, the recipient may request an adjustment of benefits
17 to be paid from the state fund or by the self-insurer, as the case may
18 be, subject to the following:

19 (a) The recipient must request an adjustment in benefits within
20 one year from the date of the incorrect payment or it will be deemed
21 any claim therefore has been waived.

22 (b) The recipient may not seek an adjustment of benefits because
23 of adjudicator error. Adjustments due to adjudicator error are
24 addressed by the filing of a written request for reconsideration with
25 the department of labor and industries or an appeal with the board of
26 industrial insurance appeals within sixty days from the date the order
27 is communicated as provided in RCW 51.52.050. "Adjudicator error"
28 includes the failure to consider information in the claim file,
29 failure to secure adequate information, or an error in judgment.

30 (3) Whenever the department issues an order rejecting a claim for
31 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment
32 for temporary disability benefits has been paid by a self-insurer
33 pursuant to RCW 51.32.190(3) or by the department pursuant to RCW
34 51.32.210, the recipient thereof shall repay such benefits and

1 recoupment may be made from any future payments due to the recipient
2 on any claim with the state fund or self-insurer, as the case may be.
3 The director, under rules adopted in accordance with the procedures
4 provided in the administrative procedure act, chapter 34.05 RCW, may
5 exercise discretion to waive, in whole or in part, the amount of any
6 such payments where the recovery would be against equity and good
7 conscience.

8 (4) Whenever any payment of benefits under this title has been
9 made pursuant to an adjudication by the department or by order of the
10 board or any court and timely appeal therefrom has been made where the
11 final decision is that any such payment was made pursuant to an
12 erroneous adjudication, the recipient thereof shall repay it and
13 recoupment may be made from any future payments due to the recipient
14 on any claim whether state fund or self-insured.

15 (a) The director, pursuant to rules adopted in accordance with the
16 procedures provided in the administrative procedure act, chapter 34.05
17 RCW, may exercise discretion to waive, in whole or in part, the amount
18 of any such payments where the recovery would be against equity and
19 good conscience. However, if the director waives in whole or in part
20 any such payments due a self-insurer, the self-insurer shall be
21 reimbursed the amount waived from the self-insured employer
22 overpayment reimbursement fund.

23 (b) The department shall collect information regarding self-
24 insured claim overpayments resulting from final decisions of the board
25 and the courts, and recoup such overpayments on behalf of the self-
26 insurer from any open, new, or reopened state fund or self-insured
27 claims. The department shall forward the amounts collected to the
28 self-insurer to whom the payment is owed. The department may provide
29 information as needed to any self-insurers from whom payments may be
30 collected on behalf of the department or another self-insurer.
31 Notwithstanding RCW 51.32.040, any self-insurer requested by the
32 department to forward payments to the department pursuant to this
33 subsection shall pay the department directly. The department shall
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1 credit the amounts recovered to the appropriate fund, or forward
2 amounts collected to the appropriate self-insurer, as the case may be.

3 (c) If a self-insurer is not fully reimbursed within twenty-four
4 months of the first attempt at recovery through the collection process
5 pursuant to this subsection and by means of processes pursuant to
6 subsection (6) of this section, the self-insurer shall be reimbursed
7 for the remainder of the amount due from the self-insured employer
8 overpayment reimbursement fund.

9 (d) For purposes of this subsection, "recipient" does not include
10 health service providers whose treatment or services were authorized
11 by the department or self-insurer.

12 (e) The department or self-insurer shall first attempt recovery of
13 overpayments for health services from any entity that provided health
14 insurance to the worker to the extent that the health insurance entity
15 would have provided health insurance benefits but for workers'
16 compensation coverage.

17 (5)(a) Whenever any payment of benefits under this title has been
18 induced by willful misrepresentation the recipient thereof shall repay
19 any such payment together with a penalty of fifty percent of the total
20 of any such payments and the amount of such total sum may be recouped
21 from any future payments due to the recipient on any claim with the
22 state fund or self-insurer against whom the willful misrepresentation
23 was committed, as the case may be, and the amount of such penalty
24 shall be placed in the supplemental pension fund. Such repayment or
25 recoupment must be demanded or ordered within three years of the
26 discovery of the willful misrepresentation.

27 (b) For purposes of this subsection (5), it is willful
28 misrepresentation for a person to obtain payments or other benefits
29 under this title in an amount greater than that to which the person
30 otherwise would be entitled. Willful misrepresentation includes:

31 (i) Willful false statement; or

32 (ii) Willful misrepresentation, omission, or concealment of any
33 material fact.

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1 (c) For purposes of this subsection (5), "willful" means a
2 conscious or deliberate false statement, misrepresentation, omission,
3 or concealment of a material fact with the specific intent of
4 obtaining, continuing, or increasing benefits under this title.

5 (d) For purposes of this subsection (5), failure to disclose a
6 work-type activity must be willful in order for a misrepresentation to
7 have occurred.

8 (e) For purposes of this subsection (5), a material fact is one
9 which would result in additional, increased, or continued benefits,
10 including but not limited to facts about physical restrictions, or
11 work-type activities which either result in wages or income or would
12 be reasonably expected to do so. Wages or income include the receipt
13 of any goods or services. For a work-type activity to be reasonably
14 expected to result in wages or income, a pattern of repeated activity
15 must exist. For those activities that would reasonably be expected to
16 result in wages or produce income, but for which actual wage or income
17 information cannot be reasonably determined, the department shall
18 impute wages pursuant to RCW 51.08.178(4).

19 (6) The worker, beneficiary, or other person affected thereby
20 shall have the right to contest an order assessing an overpayment
21 pursuant to this section in the same manner and to the same extent as
22 provided under RCW 51.52.050 and 51.52.060. In the event such an
23 order becomes final under chapter 51.52 RCW and notwithstanding the
24 provisions of subsections (1) through (5) of this section, the
25 director, director's designee, or self-insurer may file with the clerk
26 in any county within the state a warrant in the amount of the sum
27 representing the unpaid overpayment and/or penalty plus interest
28 accruing from the date the order became final. The clerk of the
29 county in which the warrant is filed shall immediately designate a
30 superior court cause number for such warrant and the clerk shall cause
31 to be entered in the judgment docket under the superior court cause
32 number assigned to the warrant, the name of the worker, beneficiary,
33 or other person mentioned in the warrant, the amount of the unpaid
34 overpayment and/or penalty plus interest accrued, and the date the

1 warrant was filed. The amount of the warrant as docketed shall become
2 a lien upon the title to and interest in all real and personal
3 property of the worker, beneficiary, or other person against whom the
4 warrant is issued, the same as a judgment in a civil case docketed in
5 the office of such clerk. The sheriff shall then proceed in the same
6 manner and with like effect as prescribed by law with respect to
7 execution or other process issued against rights or property upon
8 judgment in the superior court. Such warrant so docketed shall be
9 sufficient to support the issuance of writs of garnishment in favor of
10 the department or self-insurer in the manner provided by law in the
11 case of judgment, wholly or partially unsatisfied. The clerk of the
12 court shall be entitled to a filing fee under RCW 36.18.012(10), which
13 shall be added to the amount of the warrant. A copy of such warrant
14 shall be mailed to the worker, beneficiary, or other person within
15 three days of filing with the clerk.

16 The director, director's designee, or self-insurer may issue to
17 any person, firm, corporation, municipal corporation, political
18 subdivision of the state, public corporation, or agency of the state,
19 a notice to withhold and deliver property of any kind if there is
20 reason to believe that there is in the possession of such person,
21 firm, corporation, municipal corporation, political subdivision of the
22 state, public corporation, or agency of the state, property that is
23 due, owing, or belonging to any worker, beneficiary, or other person
24 upon whom a warrant has been served for payments due the department or
25 self-insurer. The notice and order to withhold and deliver shall be
26 served by ~~((certified mail))~~ a method for which receipt can be
27 confirmed or tracked accompanied by an affidavit of service by mailing
28 or served by the sheriff of the county, or by the sheriff's deputy, or
29 by any authorized representative of the director, director's designee,
30 or self-insurer. Any person, firm, corporation, municipal
31 corporation, political subdivision of the state, public corporation,
32 or agency of the state upon whom service has been made shall answer
33 the notice within twenty days exclusive of the day of service, under
34 oath and in writing, and shall make true answers to the matters

1 inquired or in the notice and order to withhold and deliver. In the
2 event there is in the possession of the party named and served with
3 such notice and order, any property that may be subject to the claim
4 of the department or self-insurer, such property shall be delivered
5 forthwith to the director, the director's authorized representative,
6 or self-insurer upon demand. If the party served and named in the
7 notice and order fails to answer the notice and order within the time
8 prescribed in this section, the court may, after the time to answer
9 such order has expired, render judgment by default against the party
10 named in the notice for the full amount, plus costs, claimed by the
11 director, director's designee, or self-insurer in the notice. In the
12 event that a notice to withhold and deliver is served upon an employer
13 and the property found to be subject thereto is wages, the employer
14 may assert in the answer all exemptions provided for by chapter 6.27
15 RCW to which the wage earner may be entitled.

16 This subsection shall only apply to orders assessing an
17 overpayment which are issued on or after July 28, 1991: PROVIDED,
18 That this subsection shall apply retroactively to all orders assessing
19 an overpayment resulting from fraud, civil or criminal.

20 (7) Orders assessing an overpayment which are issued on or after
21 July 28, 1991, shall include a conspicuous notice of the collection
22 methods available to the department or self-insurer.

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24 **Sec. 7.** RCW 51.48.120 and 1995 c 160 s 5 are each amended to read
25 as follows:

26 If any employer should default in any payment due to the state
27 fund the director or the director's designee may issue a notice of
28 assessment certifying the amount due, which notice shall be served
29 upon the employer by mailing such notice to the employer by
30 (~~certified mail~~) a method for which receipt can be confirmed or
31 tracked to the employer's last known address or served in the manner
32 prescribed for the service of a summons in a civil action. Such
33 notice shall contain the information that an appeal must be filed with
34 the board of industrial insurance appeals and the director by mail or

1 personally within thirty days of the date of service of the notice of
2 assessment in order to appeal the assessment unless a written request
3 for reconsideration is filed with the department of labor and
4 industries.

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6 **Sec. 8.** RCW 51.48.150 and 1995 c 160 s 6 are each amended to read
7 as follows:

8 The director or the director's designee is hereby authorized to
9 issue to any person, firm, corporation, municipal corporation,
10 political subdivision of the state, a public corporation, or any
11 agency of the state, a notice and order to withhold and deliver
12 property of any kind whatsoever when he or she has reason to believe
13 that there is in the possession of such person, firm, corporation,
14 municipal corporation, political subdivision of the state, public
15 corporation, or any agency of the state, property which is or shall
16 become due, owing, or belonging to any employer upon whom a notice of
17 assessment has been served by the department for payments due to the
18 state fund. The effect of a notice and order to withhold and deliver
19 shall be continuous from the date such notice and order to withhold
20 and deliver is first made until the liability out of which such notice
21 and order to withhold and deliver arose is satisfied or becomes
22 unenforceable because of lapse of time. The department shall release
23 the notice and order to withhold and deliver when the liability out of
24 which the notice and order to withhold and deliver arose is satisfied
25 or becomes unenforceable by reason of lapse of time and shall notify
26 the person against whom the notice and order to withhold and deliver
27 was made that such notice and order to withhold and deliver has been
28 released.

29 The notice and order to withhold and deliver shall be served by
30 the sheriff of the county or by the sheriff's deputy, by ((~~certified~~
31 ~~mail, return receipt requested~~)) a method for which receipt can be
32 confirmed or tracked, or by any duly authorized representatives of the
33 director. Any person, firm, corporation, municipal corporation,
34 political subdivision of the state, public corporation or any agency

1 of the state upon whom service has been made is hereby required to
2 answer the notice within twenty days exclusive of the day of service,
3 under oath and in writing, and shall make true answers to the matters
4 inquired of in the notice and order to withhold and deliver. In the
5 event there is in the possession of the party named and served with a
6 notice and order to withhold and deliver, any property which may be
7 subject to the claim of the department, such property shall be
8 delivered forthwith to the director or the director's duly authorized
9 representative upon service of the notice to withhold and deliver
10 which will be held in trust by the director for application on the
11 employer's indebtedness to the department, or for return without
12 interest, in accordance with a final determination of a petition for
13 review, or in the alternative such party shall furnish a good and
14 sufficient surety bond satisfactory to the director conditioned upon
15 final determination of liability. Should any party served and named
16 in the notice to withhold and deliver fail to make answer to such
17 notice and order to withhold and deliver, within the time prescribed
18 herein, it shall be lawful for the court, after the time to answer
19 such order has expired, to render judgment by default against the
20 party named in the notice to withhold and deliver for the full amount
21 claimed by the director in the notice to withhold and deliver together
22 with costs. In the event that a notice to withhold and deliver is
23 served upon an employer and the property found to be subject thereto
24 is wages, then the employer shall be entitled to assert in the answer
25 to all exemptions provided for by chapter 6.27 RCW to which the wage
26 earner may be entitled.

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28 **Sec. 9.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read
29 as follows:

30 (1) Whenever the department has made any order, decision, or
31 award, it shall promptly serve the worker, beneficiary, employer, or
32 other person affected thereby, with a copy thereof by mail, (~~which~~
33 ~~shall be addressed to such person at his or her last known address as~~
34 ~~shown by the records of the department~~) or if the worker,

1 beneficiary, employer, or other person affected thereby chooses, the
2 department may send correspondence and other legal notices by secure
3 electronic means except for orders communicating the closure of a
4 claim. Persons who choose to receive correspondence and other legal
5 notices electronically shall be provided information to assist them in
6 ensuring all electronic documents and communications are received.
7 Correspondence and notices must be addressed to such a person at his
8 or her last known postal or electronic address as shown by the records
9 of the department. Correspondence and notices sent electronically are
10 considered received on the date sent by the department. The copy, in
11 case the same is a final order, decision, or award, shall bear on the
12 same side of the same page on which is found the amount of the award,
13 a statement, set in black faced type of at least ten point body or
14 size, that such final order, decision, or award shall become final
15 within sixty days from the date the order is communicated to the
16 parties unless a written request for reconsideration is filed with the
17 department of labor and industries, Olympia, or an appeal is filed
18 with the board of industrial insurance appeals, Olympia. However, a
19 department order or decision making demand, whether with or without
20 penalty, for repayment of sums paid to a provider of medical, dental,
21 vocational, or other health services rendered to an industrially
22 injured worker, shall state that such order or decision shall become
23 final within twenty days from the date the order or decision is
24 communicated to the parties unless a written request for
25 reconsideration is filed with the department of labor and industries,
26 Olympia, or an appeal is filed with the board of industrial insurance
27 appeals, Olympia.

28 (2)(a) Whenever the department has taken any action or made any
29 decision relating to any phase of the administration of this title the
30 worker, beneficiary, employer, or other person aggrieved thereby may
31 request reconsideration of the department, or may appeal to the board.
32 In an appeal before the board, the appellant shall have the burden of
33 proceeding with the evidence to establish a prima facie case for the
34 relief sought in such appeal.

1 (b) An order by the department awarding benefits shall become
2 effective and benefits due on the date issued. Subject to (b)(i) and
3 (ii) of this subsection, if the department order is appealed the order
4 shall not be stayed pending a final decision on the merits unless
5 ordered by the board. Upon issuance of the order granting the appeal,
6 the board will provide the worker with notice concerning the potential
7 of an overpayment of benefits paid pending the outcome of the appeal
8 and the requirements for interest on unpaid benefits pursuant to RCW
9 51.52.135. A worker may request that benefits cease pending appeal at
10 any time following the employer's motion for stay or the board's order
11 granting appeal. The request must be submitted in writing to the
12 employer, the board, and the department. Any employer may move for a
13 stay of the order on appeal, in whole or in part. The motion must be
14 filed within fifteen days of the order granting appeal. The board
15 shall conduct an expedited review of the claim file provided by the
16 department as it existed on the date of the department order. The
17 board shall issue a final decision within twenty-five days of the
18 filing of the motion for stay or the order granting appeal, whichever
19 is later. The board's final decision may be appealed to superior
20 court in accordance with RCW 51.52.110. The board shall grant a
21 motion to stay if the moving party demonstrates that it is more likely
22 than not to prevail on the facts as they existed at the time of the
23 order on appeal. The board shall not consider the likelihood of
24 recoupment of benefits as a basis to grant or deny a motion to stay.
25 If a self-insured employer prevails on the merits, any benefits paid
26 may be recouped pursuant to RCW 51.32.240.

27 (i) If upon reconsideration requested by a worker or medical
28 provider, the department has ordered an increase in a permanent
29 partial disability award from the amount reflected in an earlier
30 order, the award reflected in the earlier order shall not be stayed
31 pending a final decision on the merits. However, the increase is
32 stayed without further action by the board pending a final decision on
33 the merits.

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1 (ii) If any party appeals an order establishing a worker's wages
2 or the compensation rate at which a worker will be paid temporary or
3 permanent total disability or loss of earning power benefits, the
4 worker shall receive payment pending a final decision on the merits
5 based on the following:

6 (A) When the employer is self-insured, the wage calculation or
7 compensation rate the employer most recently submitted to the
8 department; or

9 (B) When the employer is insured through the state fund, the
10 highest wage amount or compensation rate uncontested by the parties.

11 Payment of benefits or consideration of wages at a rate that is
12 higher than that specified in (b)(ii)(A) or (B) of this subsection is
13 stayed without further action by the board pending a final decision on
14 the merits.

15 (c) In an appeal from an order of the department that alleges
16 willful misrepresentation, the department or self-insured employer
17 shall initially introduce all evidence in its case in chief. Any such
18 person aggrieved by the decision and order of the board may thereafter
19 appeal to the superior court, as prescribed in this chapter."

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EFFECT: Payment by an employer for direct primary care services on an allowed industrial injury or occupational disease claim does not disqualify: (1) the employer from participating in a retrospective rating plan; (2) any related group sponsor from promoting a retrospective rating plan; or (3) any related plan administrator from administering a retrospective rating plan.

L&I must department determine the information needed and any changes to the retrospective rating premium and claim cost calculations to maintain appropriate and equitable retrospective rating refunds when employers pay for direct primary care services.

The department shall report to the appropriate committees of the legislature by December 1, 2011 on statutory changes needed to ensure an injured worker may receive care from a health care provider who furnishes primary care services through a direct care provider.

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