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ENGROSSED SUBSTITUTE HOUSE BILL 1487

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State of Washington

62nd Legislature

2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Springer and Condotta)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to claims management by retrospective rating plan  
2 employers and groups; adding new sections to chapter 51.18 RCW;  
3 creating a new section; and providing an expiration date.

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

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

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

15 (a) Schedule medical examinations and consultations, using only  
16 qualified persons from the department's approved examiner list. No  
17 more than two independent medical examinations for each claim may be  
18 scheduled by the claims administrator within any twenty-four month  
19 period. An independent medical examination may be scheduled when the

1 claim file includes medical reports indicating that an examination may  
2 be necessary for any of the following reasons: Establishing a  
3 diagnosis, outlining a program of treatment, evaluating what, if any,  
4 conditions are related to the claimed industrial injury or occupational  
5 disease, determining whether an industrial injury or occupational  
6 disease has aggravated a preexisting condition, establishing an  
7 impairment rating when the claim file medical reports indicate that the  
8 worker's claim-related condition is at maximum medical improvement,  
9 evaluating whether the industrial injury or occupational disease has  
10 worsened, or evaluating the worker's mental or physical restrictions as  
11 well as the worker's ability to work. The results of any independent  
12 medical examination scheduled under this subsection must be sent by the  
13 examiner or independent medical examination panel directly to the  
14 department for the claimant's claim file. The department shall enforce  
15 penalties under RCW 51.32.110 for refusals to submit to medical  
16 examinations scheduled by retrospective rating plan employers or groups  
17 or obstruction of the same.

18 (b) Schedule vocational assessments using only qualified providers  
19 from a qualified provider list developed by the department. Providers  
20 may be selected based on department quality or performance indicators  
21 and based on industry experience. Any vocational assessment resulting  
22 from a referral under this section must be sent by the vocational  
23 rehabilitation counselor directly to the department for the claimant's  
24 claim file.

25 (c) Close claims as provided by this subsection. Closure of claims  
26 shall be conducted under the standards and procedures as provided in  
27 this title, except as provided in this section. If a claim with date  
28 of injury or manifestation of occupational disease on or after January  
29 1, 2012: (i) Involves only medical treatment and/or the payment of  
30 temporary disability compensation under RCW 51.32.090 for a period of  
31 thirty days or less; (ii) at the time medical treatment is concluded,  
32 does not involve permanent disability; (iii) is one with respect to  
33 which the department has not intervened under subsection (2) of this  
34 section; and (iv) concerns an injured worker who has returned to work  
35 with the retrospective rating plan employer or employer within the  
36 group at the worker's previous job or at a job that has at least  
37 ninety-five percent of at-injury wages as calculated under RCW  
38 51.08.178, the claim may be closed by the retrospective rating plan

1 employer or group, subject to reporting of claims to the department in  
2 a manner prescribed by department rules adopted under chapter 34.05  
3 RCW. No later than at the time of closure for such claims, the  
4 retrospective rating plan employer or group shall issue and send to the  
5 department and the worker a written order and forward to the worker a  
6 notification developed by the department describing in nontechnical  
7 language the worker's rights under this title.

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

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

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

37 (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 section,  
13 but does not otherwise affect the administrator's status or the  
14 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.

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

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

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW  
31 to read as follows:

32 (1) When a retrospective rating plan employer or group or its  
33 representative communicates with a medical provider, the employer must  
34 provide to the worker and send to the claim file a copy of any written  
35 communication received and a memorandum describing any oral

1 communication. The copy of the written communication and memorandum  
2 describing an oral communication must be provided within seventy-two  
3 hours of receiving the information.

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

7 (3) The employer must send the information required to be provided  
8 under subsection (1) of this section to the claim file electronically.  
9 If the worker chooses, the information must be sent to the worker  
10 electronically.

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

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

24 NEW SECTION. **Sec. 5.** The joint legislative audit and review  
25 committee shall conduct a study of the impact of section 1 of this act  
26 on the state's workers' compensation system, including the impact on  
27 the retrospective rating plan performance and refunds, the department's  
28 processes, and worker outcomes and satisfaction. The joint legislative  
29 audit and review committee shall submit the study to the appropriate  
30 committees of the legislature by July 1, 2015.

31 NEW SECTION. **Sec. 6.** Sections 1 and 4 of this act expire July 1,  
32 2016.

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