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## Labor & Workforce Development Committee

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### SB 5112

**Brief Description:** Granting scheduling authority for qualified retrospective rating plan employers and groups.

**Sponsors:** Senators Holmquist Newbry, Sheldon, Braun and Hewitt.

#### Brief Summary of Bill

- Gives industrial insurance retrospective rating employers and groups authority to schedule independent medical examinations and consultations and vocational assessments.

**Hearing Date:** 2/26/14

**Staff:** Joan Elgee (786-7106).

#### Background:

Under the state's industrial insurance laws, employers must either insure through the State Fund administered by the Department of Labor and Industries (Department) or, if qualified, may self-insure. For State Fund employers, participation in a retrospective rating plan (retro) is available for an employer or group of employers that meets specified requirements. Participation in retro allows an employer or a group of employers to assume a portion of industrial insurance risk and receive premium refunds or be assessed additional premiums based on claim losses. Retro is designed to reward employers that are able to keep claim costs below a preselected level as a result of improvements in workplace safety and injured worker outcomes.

Injured workers must submit to an independent medical examination (IME) when requested by the Department or self-insured employer. An IME may be used to establish a diagnosis, outline a treatment program, evaluate a worker's restrictions, and for other matters relating to a worker's claim. The Department maintains a list of qualified examiners. A worker who unreasonably

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refuses to submit to or obstructs an IME may have his or her benefits suspended. Consultations with other providers also occur in some circumstances.

Vocational rehabilitation services are available to an injured worker when these services are necessary and likely to enable the injured worker to become gainfully employed. After an assessment and determination of eligibility for services, a vocational rehabilitation plan is developed.

In 2011 the Legislature directed the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the workers' compensation claims management system. The audit must include a determination of whether current initiatives improve service delivery, meet the needs of current and future workers and employers, improve public education and outreach, and are otherwise measurable. The final results of the audit are due by June 30, 2015.

### **Summary of Bill:**

Claims representatives for retro employers and groups may assist the Department in the processing of claims by scheduling: (1) independent medical examinations and consultations, and (2) vocational rehabilitation assessments.

#### Medical Examinations and Consultations.

An IME may be scheduled when the claim file includes medical reports indicating that an examination may be necessary to establish a diagnosis, outline a treatment program, evaluate what conditions are related to the industrial injury or disease, determine whether an injury or disease has aggravated a preexisting condition, establish an impairment rating, evaluate whether the injury or disease has worsened, or evaluate the worker's mental or physical restrictions as well as the worker's ability to work. Examiners must be on the Department's approved list. No more than two IMEs on a claim may be scheduled within any 24-month period. Results must be sent to the Department. The Department must use the same criteria it applies to Department-requested exams to impose penalties on a worker for refusing to submit to or obstruction of an IME.

#### Vocational Rehabilitation Assessments.

Vocational rehabilitation providers must be approved by the Department and must be selected based on experience with the industry involved.

Certain requirements apply to the exercise of either scheduling authority. The Department retains the final authority for claims decisions and if a dispute arises from the handling of a claim, the worker or the retro employer or group may request the Department to intervene. At least one claims representative for each retro employer or group must meet training requirements established by the Department by rule. Retro employers and groups must notify the Department before scheduling; rules must minimize the Department's need to respond and ensure that any delay in response does not impede the timely administration of the claim. Retro employers and groups must also give workers written notice that a worker may request the Department to intervene at any time. Employers and groups must send any written communications with a medical provider or vocational services provider to the claim file. Providers must send the results of an IME or vocational rehabilitation assessment to the Department.

Providers bill the Department for their services and charges incurred by the employer or group must be charged against the claim.

If the Director of the Department determines that a claims representative is not following proper industrial insurance claims procedures, the Director may take corrective action against the retro employer or group. Corrective action may include:

- a probationary period of time for the claims representative;
- additional mandatory training for the claims representative; and
- monitoring of the activity of the retro employer or group to determine progress towards compliance.

The Director must adopt rules defining the corrective actions in response to final determinations of failure to follow proper procedures. If compliance is attained, no further action may be taken. If compliance is not attained, the Director may take additional corrective action, including restricting the retro employer or group from scheduling. Restricting the exercise of scheduling authority does not otherwise affect the claim representative's status or the retro employer or group's status in the retro program.

The Department has general rule-making authority to implement the scheduling authority.

The review of current initiatives by the JLARC as part of its performance audit of the workers' compensation claims management system must also include a review of the scheduling authority granted to retro employers and groups.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.