H-0269.1

HOUSE BILL 1613

State of Washington 64th Legislature 2015 Regular Session

By Representatives Pollet, Haler, Reykdal, Sells, Dunshee, Walkinshaw, and Gregerson

Read first time 01/23/15. Referred to Committee on Labor.

1 AN ACT Relating to treatment to protect life or alleviate pain of
2 injured workers with permanent partial disabilities; amending RCW
3 51.36.010; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a primary goal
6 of the state's industrial insurance system is to assure injured
7 workers receive proper and necessary medical and surgical treatment,
8 including prescription drugs. The legislature further finds that in
9 some cases, a worker requires ongoing drug or other treatment to
10 protect the worker's life or alleviate pain, after the worker's
11 condition has become fixed. As of the effective date of this section,
12 current law, as interpreted by the state court of appeals in
13 *Department of Labor & Industries v. Slaugh*, limits the department of
14 labor and industries to allowing such continuing treatment at or
15 after claim closure only for workers with permanent total disability.
16 A worker with a permanent partial disability, on the other hand, must
17 prove aggravation of the disability to receive continuing treatment.
18 The legislature finds no compelling reason to treat workers with
19 permanent partial disabilities differently from workers with
20 permanent total disabilities and that allowing such discretionary
21 treatment also for workers with permanent partial disabilities will

1 reduce suffering and minimize economic loss. Therefore, the
2 legislature intends to give the department discretion to allow
3 continuing treatment in all cases of permanent disability.

4 **Sec. 2.** RCW 51.36.010 and 2013 c 19 s 48 are each amended to
5 read as follows:
6 (1) The legislature finds that high quality medical treatment and
7 adherence to occupational health best practices can prevent
8 disability and reduce loss of family income for workers, and lower
9 labor and insurance costs for employers. Injured workers deserve high
10 quality medical care in accordance with current health care best
11 practices. To this end, the department shall establish minimum
12 standards for providers who treat workers from both state fund and
13 self-insured employers. The department shall establish a health care
14 provider network to treat injured workers, and shall accept providers
15 into the network who meet those minimum standards. The department
16 shall convene an advisory group made up of representatives from or
17 designees of the workers' compensation advisory committee and the
18 industrial insurance medical and chiropractic advisory committees to
19 consider and advise the department related to implementation of this
20 section, including development of best practices treatment guidelines
21 for providers in the network. The department shall also seek the
22 input of various health care provider groups and associations
23 concerning the network's implementation. Network providers must be
24 required to follow the department's evidence-based coverage decisions
25 and treatment guidelines, policies, and must be expected to follow
26 other national treatment guidelines appropriate for their patient.
27 The department, in collaboration with the advisory group, shall also
28 establish additional best practice standards for providers to qualify
29 for a second tier within the network, based on demonstrated use of
30 occupational health best practices. This second tier is separate from
31 and in addition to the centers for occupational health and education
32 established under subsection (5) of this section.
33 (2)(a) Upon the occurrence of any injury to a worker entitled to
34 compensation under the provisions of this title, he or she shall
35 receive proper and necessary medical and surgical services at the
36 hands of a physician or licensed advanced registered nurse
37 practitioner of his or her own choice, if conveniently located,
38 except as provided in (b) of this subsection, and proper and

1 necessary hospital care and services during the period of his or her
2 disability from such injury.

3 (b) Once the provider network is established in the worker's
4 geographic area, an injured worker may receive care from a nonnetwork
5 provider only for an initial office or emergency room visit. However,
6 the department or self-insurer may limit reimbursement to the
7 department's standard fee for the services. The provider must comply
8 with all applicable billing policies and must accept the department's
9 fee schedule as payment in full.

10 (c) The department, in collaboration with the advisory group,
11 shall adopt policies for the development, credentialing,
12 accreditation, and continued oversight of a network of health care
13 providers approved to treat injured workers. Health care providers
14 shall apply to the network by completing the department's provider
15 application which shall have the force of a contract with the
16 department to treat injured workers. The advisory group shall
17 recommend minimum network standards for the department to approve a
18 provider's application, to remove a provider from the network, or to
19 require peer review such as, but not limited to:

20 (i) Current malpractice insurance coverage exceeding a dollar
21 amount threshold, number, or seriousness of malpractice suits over a
22 specific time frame;

23 (ii) Previous malpractice judgments or settlements that do not
24 exceed a dollar amount threshold recommended by the advisory group,
25 or a specific number or seriousness of malpractice suits over a
26 specific time frame;

27 (iii) No licensing or disciplinary action in any jurisdiction or
28 loss of treating or admitting privileges by any board, commission,
29 agency, public or private health care payer, or hospital;

30 (iv) For some specialties such as surgeons, privileges in at
31 least one hospital;

32 (v) Whether the provider has been credentialed by another health
33 plan that follows national quality assurance guidelines; and

34 (vi) Alternative criteria for providers that are not credentialed
35 by another health plan.

36 The department shall develop alternative criteria for providers
37 that are not credentialed by another health plan or as needed to
38 address access to care concerns in certain regions.

39 (d) Network provider contracts will automatically renew at the
40 end of the contract period unless the department provides written

notice of changes in contract provisions or the department or provider provides written notice of contract termination. The industrial insurance medical advisory committee shall develop criteria for removal of a provider from the network to be presented to the department and advisory group for consideration in the development of contract terms.

(e) In order to monitor quality of care and assure efficient management of the provider network, the department shall establish additional criteria and terms for network participation including, but not limited to, requiring compliance with administrative and billing policies.

(f) The advisory group shall recommend best practices standards to the department to use in determining second tier network providers. The department shall develop and implement financial and nonfinancial incentives for network providers who qualify for the second tier. The department is authorized to certify and decertify second tier providers.

(3) The department shall work with self-insurers and the department utilization review provider to implement utilization review for the self-insured community to ensure consistent quality, cost-effective care for all injured workers and employers, and to reduce administrative burden for providers.

(4)(a) The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed.

(b) In all accepted claims, treatment shall be limited, except as otherwise provided, in point of duration as follows:

(i) In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease;

(ii) In case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease((~~: PROVIDED, That~~)). After any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of

industrial insurance to be necessary to his or her more complete recovery;

(iii) In case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll((~~:~~ ~~PROVIDED, HOWEVER, That~~)).

(c) In the case of a permanent partial disability or permanent total disability, the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the pharmacy quality assurance commission as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

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

(5)(a) The legislature finds that the department and its business and labor partners have collaborated in establishing centers for occupational health and education to promote best practices and prevent preventable disability by focusing additional provider-based resources during the first twelve weeks following an injury. The centers for occupational health and education represent innovative accountable care systems in an early stage of development consistent with national health care reform efforts. Many Washington workers do not yet have access to these innovative health care delivery models.

(b) To expand evidence-based occupational health best practices, the department shall establish additional centers for occupational

health and education, with the goal of extending access to at least fifty percent of injured and ill workers by December 2013 and to all injured workers by December 2015. The department shall also develop additional best practices and incentives that span the entire period of recovery, not only the first twelve weeks.

(c) The department shall certify and decertify centers for occupational health and education based on criteria including institutional leadership and geographic areas covered by the center for occupational health and education, occupational health leadership and education, mix of participating health care providers necessary to address the anticipated needs of injured workers, health services coordination to deliver occupational health best practices, indicators to measure the success of the center for occupational health and education, and agreement that the center's providers shall, if feasible, treat certain injured workers if referred by the department or a self-insurer.

(d) Health care delivery organizations may apply to the department for certification as a center for occupational health and education. These may include, but are not limited to, hospitals and affiliated clinics and providers, multispecialty clinics, health maintenance organizations, and organized systems of network physicians.

(e) The centers for occupational health and education shall implement benchmark quality indicators of occupational health best practices for individual providers, developed in collaboration with the department. A center for occupational health and education shall remove individual providers who do not consistently meet these quality benchmarks.

(f) The department shall develop and implement financial and nonfinancial incentives for center for occupational health and education providers that are based on progressive and measurable gains in occupational health best practices, and that are applicable throughout the duration of an injured or ill worker's episode of care.

(g) The department shall develop electronic methods of tracking evidence-based quality measures to identify and improve outcomes for injured workers at risk of developing prolonged disability. In addition, these methods must be used to provide systematic feedback to physicians regarding quality of care, to conduct appropriate objective evaluation of progress in the centers for occupational

health and education, and to allow efficient coordination of services.

(6) If a provider fails to meet the minimum network standards established in subsection (2) of this section, the department is authorized to remove the provider from the network or take other appropriate action regarding a provider's participation. The department may also require remedial steps as a condition for a provider to participate in the network. The department, with input from the advisory group, shall establish waiting periods that may be imposed before a provider who has been denied or removed from the network may reapply.

(7) The department may permanently remove a provider from the network or take other appropriate action when the provider exhibits a pattern of conduct of low quality care that exposes patients to risk of physical or psychiatric harm or death. Patterns that qualify as risk of harm include, but are not limited to, poor health care outcomes evidenced by increased, chronic, or prolonged pain or decreased function due to treatments that have not been shown to be curative, safe, or effective or for which it has been shown that the risks of harm exceed the benefits that can be reasonably expected based on peer-reviewed opinion.

(8) The department may not remove a health care provider from the network for an isolated instance of poor health and recovery outcomes due to treatment by the provider.

(9) When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

(10) The department may adopt rules related to this section.

(11) The department shall report to the workers' compensation advisory committee and to the appropriate committees of the legislature on each December 1st, beginning in 2012 and ending in 2016, on the implementation of the provider network and expansion of the centers for occupational health and education. The reports must include a summary of actions taken, progress toward long-term goals, outcomes of key initiatives, access to care issues, results of disputes or controversies related to new provisions, and whether any

1 changes are needed to further improve the occupational health best
2 practices care of injured workers.

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