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**SENATE BILL 5512**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Braun, Baumgartner, Rivers, Bailey, Schoesler, and Warnick

AN ACT Relating to independent medical exam and consultation and vocational rehabilitation assessment scheduling authority for qualified retrospective rating plan employers and groups; amending RCW 51.04.1101; adding a new section to chapter 51.18 RCW; and providing an expiration date.

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

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

(1) In addition to those general powers and rights deemed appropriate by the department, retrospective rating plan employers and groups may assist the department in the processing of claims as provided in this section. The department retains the final authority over decisions with respect to any individual claim. Claims representatives for retrospective rating plan employers and groups may:

(a) Schedule medical examinations and consultations, using only qualified persons from the department's approved examiner list. No more than two independent medical examinations for each claim may be scheduled by the claims representative within any twenty-four month period. An independent medical examination may be scheduled when the claim file includes medical reports indicating that an examination may be necessary for any of the following reasons: Establishing a diagnosis; outlining a program of treatment; evaluating what, if any, conditions are related to the claimed industrial injury or occupational disease; determining whether an industrial injury or occupational disease has aggravated a preexisting condition; establishing an impairment rating when the claim file medical reports indicate that the worker's claim-related condition is at maximum medical improvement; evaluating whether the industrial injury or occupational disease has worsened; or evaluating the worker's mental or physical restrictions as well as the worker's ability to work. The results of any independent medical examination scheduled under this subsection must be sent by the examiner or independent medical examination panel directly to the department for the claimant's claim file. The department must use the same criteria it applies to department requested examinations to impose penalties under RCW 51.32.110 for a worker's refusal to submit to a medical examination or obstruction of an examination; and

(b) Schedule vocational rehabilitation assessments using only qualified providers approved by the department. Providers must be selected based on experience with the industry involved. Any vocational rehabilitation assessment resulting from a referral under this subsection must be sent by the vocational rehabilitation counselor directly to the department for the claimant's claim file.

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

(3) The department must require the retrospective rating plan employer or group to notify the department prior to exercising any authority authorized by this section. Rules adopted under this section must minimize the department's need to respond and ensure that any delay in response by the department does not impede the timely administration of the claim. Providers must bill the department for their services based on the medical aid rules and fee schedules in effect at the time of the examination.

(4) Charges incurred by the retrospective rating plan employer or group for independent medical examinations or vocational rehabilitation assessments must be charged against the claim.

(5) The department must establish training requirements by rule for exercising the authority under this section. At least one claims representative for each retrospective rating plan employer or group exercising the authority under this section must have received the training.

(6)(a) The director may take corrective action, subject to RCW 51.52.050, against a retrospective rating plan employer or group if the director determines that a claims representative under its direction is not following proper industrial insurance claims procedures under this section. Corrective actions taken by the director may include:

(i) A probationary period of time for the claims representative;

(ii) Additional mandatory training for the claims representative; and

(iii) Monitoring of the activities of the claims representative to determine progress towards compliance.

(b) The director must adopt rules defining the corrective actions in response to final determinations of failure to follow proper procedures.

(c) If the director determines that compliance has been attained, no further action may be taken. If compliance has not been attained, the director may take additional corrective action including restricting the retrospective rating plan employer or group from exercising the authority under this section. Restricting the exercise of authority under this section does not otherwise affect the claim representative's status or the retrospective rating plan employer's or group's status in the retrospective rating program.

(7) Retrospective rating plan employers and groups must send to the claim file maintained by the department any written communication made under this section with a medical provider or vocational services provider not otherwise required to be submitted to the claim file.

(8) In addition to rules required to be adopted under this section, the department may adopt additional rules to implement this section.

**Sec.**  RCW 51.04.1101 and 2011 1st sp.s. c 37 s 801 are each amended to read as follows:

(1) The joint legislative audit and review committee, in consultation with the department of labor and industries and the workers' compensation advisory committee, ((~~shall~~))must conduct a performance audit of the workers' compensation claims management system, including self-insured claims. The joint legislative audit and review committee may contract with an independent expert in workers' compensation claims management to assist with the audit.

(2) The audit ((~~shall~~))must:

(a) Evaluate the extent to which the department: (i) Makes fair and timely decisions, and resolves complaints and disputes in a timely, fair, and effective manner; and (ii) communicates with employers and workers in a timely, responsive, and accurate manner, including communication about review and appeal rights, and including the use of plain language and sufficient opportunities for face-to-face meetings;

(b) Determine if current claims management organization and service delivery models are the most efficient available; analyze organization and delivery for retrospective rating plan participants as compared to nonparticipants to identify differences and how those differences influence retrospective rating plan refunds; and determine whether current initiatives, including the scheduling authority granted to retrospective rating plan employers and groups under section 1 of this act, improve service delivery, meet the needs of current and future workers and employers, improve public education and outreach, and are otherwise measurable; and

(c) Make recommendations regarding administrative changes that should be made to improve efficiency while maintaining high levels of quality service to help address system costs, and any needed legislative changes to implement the recommendations.

(3) The joint legislative audit and review committee ((~~shall~~))must submit progress reports by ((~~December 1, 2012, and December 1, 2013,~~))June 30, 2015, and December 1, 2015, and the results of the audit by June 30, ((~~2015~~))2016, to the appropriate committees of the legislature.

(4) This section expires December 31, ((~~2015~~))2017.

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