

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1691

Chapter 65, Laws of 2004

58th Legislature
2004 Regular Session

NURSES--INDUSTRIAL INSURANCE

EFFECTIVE DATE: 7/1/04

Passed by the House February 12, 2004
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2004
Yeas 44 Nays 0

BRAD OWEN

President of the Senate

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1691** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 22, 2004 - 5:11 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1691

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Grant, Conway, Campbell, Wood, Kenney, Morrell, Crouse, Rockefeller, Holmquist, McCoy and Pflug)

READ FIRST TIME 02/02/04.

1 AN ACT Relating to authorizing advanced registered nurse
2 practitioners to examine, diagnose, and treat injured workers covered
3 by industrial insurance; amending RCW 51.04.030, 51.04.050, 51.28.010,
4 51.28.020, 51.28.025, 51.28.030, 51.28.055, 51.32.055, 51.32.095,
5 51.36.010, 51.36.060, 51.36.110, 51.48.060, and 51.52.010; reenacting
6 and amending RCW 51.32.090; adding a new section to chapter 51.36 RCW;
7 creating a new section; providing an effective date; and providing an
8 expiration date.

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

10 **Sec. 1.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read
11 as follows:

12 (1) The director shall supervise the providing of prompt and
13 efficient care and treatment, including care provided by physician
14 assistants governed by the provisions of chapters 18.57A and 18.71A
15 RCW, acting under a supervising physician, (~~and~~) including
16 chiropractic care, and including care provided by licensed advanced
17 registered nurse practitioners, to workers injured during the course of
18 their employment at the least cost consistent with promptness and
19 efficiency, without discrimination or favoritism, and with as great

1 uniformity as the various and diverse surrounding circumstances and
2 locations of industries will permit and to that end shall, from time to
3 time, establish and adopt and supervise the administration of printed
4 forms, rules, regulations, and practices for the furnishing of such
5 care and treatment: PROVIDED, That the medical coverage decisions of
6 the department do not constitute a "rule" as used in RCW 34.05.010(16),
7 nor are such decisions subject to the rule-making provisions of chapter
8 34.05 RCW except that criteria for establishing medical coverage
9 decisions shall be adopted by rule after consultation with the workers'
10 compensation advisory committee established in RCW 51.04.110: PROVIDED
11 FURTHER, That the department may recommend to an injured worker
12 particular health care services and providers where specialized
13 treatment is indicated or where cost effective payment levels or rates
14 are obtained by the department: AND PROVIDED FURTHER, That the
15 department may enter into contracts for goods and services including,
16 but not limited to, durable medical equipment so long as statewide
17 access to quality service is maintained for injured workers.

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

1 (3) The director or self-insurer, as the case may be, shall make a
2 record of the commencement of every disability and the termination
3 thereof and, when bills are rendered for the care and treatment of
4 injured workers, shall approve and pay those which conform to the
5 adopted rules, regulations, established fee schedules, and practices of
6 the director and may reject any bill or item thereof incurred in
7 violation of the principles laid down in this section or the rules,
8 regulations, or the established fee schedules and rules and regulations
9 adopted under it.

10 **Sec. 2.** RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended
11 to read as follows:

12 In all hearings, actions or proceedings before the department or
13 the board of industrial insurance appeals, or before any court on
14 appeal from the board, any physician or licensed advanced registered
15 nurse practitioner having theretofore examined or treated the claimant
16 may be required to testify fully regarding such examination or
17 treatment, and shall not be exempt from so testifying by reason of the
18 relation of the physician or licensed advanced registered nurse
19 practitioner to patient.

20 **Sec. 3.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
21 as follows:

22 (1) Whenever any accident occurs to any worker it shall be the duty
23 of such worker or someone in his or her behalf to forthwith report such
24 accident to his or her employer, superintendent, or supervisor in
25 charge of the work, and of the employer to at once report such accident
26 and the injury resulting therefrom to the department pursuant to RCW
27 51.28.025 where the worker has received treatment from a physician or
28 a licensed advanced registered nurse practitioner, has been
29 hospitalized, disabled from work, or has died as the apparent result of
30 such accident and injury.

31 (2) Upon receipt of such notice of accident, the department shall
32 immediately forward to the worker or his or her beneficiaries or
33 dependents notification, in nontechnical language, of their rights
34 under this title. The notice must specify the worker's right to
35 receive health services from a physician or a licensed advanced

1 registered nurse practitioner of the worker's choice under RCW
2 51.36.010, including chiropractic services under RCW 51.36.015, and
3 must list the types of providers authorized to provide these services.

4 **Sec. 4.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read
5 as follows:

6 (1)(a) Where a worker is entitled to compensation under this title
7 he or she shall file with the department or his or her self-insured
8 employer, as the case may be, his or her application for such, together
9 with the certificate of the physician or licensed advanced registered
10 nurse practitioner who attended him or her. An application form
11 developed by the department shall include a notice specifying the
12 worker's right to receive health services from a physician or licensed
13 advanced registered nurse practitioner of the worker's choice under RCW
14 51.36.010, including chiropractic services under RCW 51.36.015, and
15 listing the types of providers authorized to provide these services.

16 (b) The physician or licensed advanced registered nurse
17 practitioner who attended the injured worker shall inform the injured
18 worker of his or her rights under this title and lend all necessary
19 assistance in making this application for compensation and such proof
20 of other matters as required by the rules of the department without
21 charge to the worker. The department shall provide physicians with a
22 manual which outlines the procedures to be followed in applications for
23 compensation involving occupational diseases, and which describes
24 claimants' rights and responsibilities related to occupational disease
25 claims.

26 (2) If application for compensation is made to a self-insured
27 employer, he or she shall forthwith send a copy of the application to
28 the department.

29 **Sec. 5.** RCW 51.28.025 and 1987 c 185 s 32 are each amended to read
30 as follows:

31 (1) Whenever an employer has notice or knowledge of an injury or
32 occupational disease sustained by any worker in his or her employment
33 who has received treatment from a physician or a licensed advanced
34 registered nurse practitioner, has been hospitalized, disabled from
35 work or has died as the apparent result of such injury or occupational

1 disease, the employer shall immediately report the same to the
2 department on forms prescribed by it. The report shall include:

3 (a) The name, address, and business of the employer;

4 (b) The name, address, and occupation of the worker;

5 (c) The date, time, cause, and nature of the injury or occupational
6 disease;

7 (d) Whether the injury or occupational disease arose in the course
8 of the injured worker's employment;

9 (e) All available information pertaining to the nature of the
10 injury or occupational disease including but not limited to any visible
11 signs, any complaints of the worker, any time lost from work, and the
12 observable effect on the worker's bodily functions, so far as is known;
13 and

14 (f) Such other pertinent information as the department may
15 prescribe by regulation.

16 (2) Failure or refusal to file the report required by subsection
17 (1) shall subject the offending employer to a penalty determined by the
18 director but not to exceed two hundred fifty dollars for each offense,
19 to be collected in a civil action in the name of the department and
20 paid into the supplemental pension fund.

21 **Sec. 6.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended to
22 read as follows:

23 Where death results from injury the parties entitled to
24 compensation under this title, or someone in their behalf, shall make
25 application for the same to the department or self-insurer as the case
26 may be, which application must be accompanied with proof of death and
27 proof of relationship showing the parties to be entitled to
28 compensation under this title, certificates of attending physician or
29 licensed advanced registered nurse practitioner, if any, and such proof
30 as required by the rules of the department.

31 Upon receipt of notice of accident under RCW 51.28.010, the
32 director shall immediately forward to the party or parties required to
33 make application for compensation under this section, notification, in
34 nontechnical language, of their rights under this title.

35 **Sec. 7.** RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended
36 to read as follows:

1 (1) Except as provided in subsection (2) of this section for claims
2 filed for occupational hearing loss, claims for occupational disease or
3 infection to be valid and compensable must be filed within two years
4 following the date the worker had written notice from a physician or a
5 licensed advanced registered nurse practitioner: (a) Of the existence
6 of his or her occupational disease, and (b) that a claim for disability
7 benefits may be filed. The notice shall also contain a statement that
8 the worker has two years from the date of the notice to file a claim.
9 The physician or licensed advanced registered nurse practitioner shall
10 file the notice with the department. The department shall send a copy
11 to the worker and to the self-insurer if the worker's employer is self-
12 insured. However, a claim is valid if it is filed within two years
13 from the date of death of the worker suffering from an occupational
14 disease.

15 (2)(a) Except as provided in (b) of this subsection, to be valid
16 and compensable, claims for hearing loss due to occupational noise
17 exposure must be filed within two years of the date of the worker's
18 last injurious exposure to occupational noise in employment covered
19 under this title or within one year of September 10, 2003, whichever is
20 later.

21 (b) A claim for hearing loss due to occupational noise exposure
22 that is not timely filed under (a) of this subsection can only be
23 allowed for medical aid benefits under chapter 51.36 RCW.

24 (3) The department may adopt rules to implement this section.

25 **Sec. 8.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read
26 as follows:

27 (1) One purpose of this title is to restore the injured worker as
28 nearly as possible to the condition of self-support as an able-bodied
29 worker. Benefits for permanent disability shall be determined under
30 the director's supervision, except as otherwise authorized in
31 subsection (9) of this section, only after the injured worker's
32 condition becomes fixed.

33 (2) All determinations of permanent disabilities shall be made by
34 the department, except as otherwise authorized in subsection (9) of
35 this section. Either the worker, employer, or self-insurer may make a
36 request or the inquiry may be initiated by the director or, as
37 authorized in subsection (9) of this section, by the self-insurer on

1 the director or the self-insurer's own motion. Determinations shall be
2 required in every instance where permanent disability is likely to be
3 present. All medical reports and other pertinent information in the
4 possession of or under the control of the employer or, if the self-
5 insurer has made a request to the department, in the possession of or
6 under the control of the self-insurer shall be forwarded to the
7 director with the request.

8 (3) A request for determination of permanent disability shall be
9 examined by the department or, if authorized in subsection (9) of this
10 section, the self-insurer, and the department shall issue an order in
11 accordance with RCW 51.52.050 or, in the case of a self-insured
12 employer, the self-insurer may: (a) Enter a written order,
13 communicated to the worker and the department self-insurance section in
14 accordance with subsection (9) of this section, or (b) request the
15 department to issue an order in accordance with RCW 51.52.050.

16 (4) The department or, in cases authorized in subsection (9) of
17 this section, the self-insurer may require that the worker present
18 himself or herself for a special medical examination by a physician or
19 physicians selected by the department, and the department or, in cases
20 authorized in subsection (9) of this section, the self-insurer may
21 require that the worker present himself or herself for a personal
22 interview. The costs of the examination or interview, including
23 payment of any reasonable travel expenses, shall be paid by the
24 department or self-insurer, as the case may be.

25 (5) The director may establish a medical bureau within the
26 department to perform medical examinations under this section.
27 Physicians hired or retained for this purpose shall be grounded in
28 industrial medicine and in the assessment of industrial physical
29 impairment. Self-insurers shall bear a proportionate share of the cost
30 of the medical bureau in a manner to be determined by the department.

31 (6) Where a dispute arises from the handling of any claim before
32 the condition of the injured worker becomes fixed, the worker,
33 employer, or self-insurer may request the department to resolve the
34 dispute or the director may initiate an inquiry on his or her own
35 motion. In these cases, the department shall proceed as provided in
36 this section and an order shall issue in accordance with RCW 51.52.050.

37 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
38 1986, and before August 1, 1997, (ii) involves only medical treatment

1 and the payment of temporary disability compensation under RCW
2 51.32.090 or only the payment of temporary disability compensation
3 under RCW 51.32.090, (iii) at the time medical treatment is concluded
4 does not involve permanent disability, (iv) is one with respect to
5 which the department has not intervened under subsection (6) of this
6 section, and (v) the injured worker has returned to work with the self-
7 insured employer of record, whether at the worker's previous job or at
8 a job that has comparable wages and benefits, the claim may be closed
9 by the self-insurer, subject to reporting of claims to the department
10 in a manner prescribed by department rules adopted under chapter 34.05
11 RCW.

12 (b) All determinations of permanent disability for claims accepted
13 under this subsection (7) by self-insurers shall be made by the self-
14 insured section of the department under subsections (1) through (4) of
15 this section.

16 (c) Upon closure of a claim under (a) of this subsection, the self-
17 insurer shall enter a written order, communicated to the worker and the
18 department self-insurance section, which contains the following
19 statement clearly set forth in bold face type: "This order constitutes
20 notification that your claim is being closed with medical benefits and
21 temporary disability compensation only as provided, and with the
22 condition you have returned to work with the self-insured employer. If
23 for any reason you disagree with the conditions or duration of your
24 return to work or the medical benefits or the temporary disability
25 compensation that has been provided, you must protest in writing to the
26 department of labor and industries, self-insurance section, within
27 sixty days of the date you received this order."

28 (8)(a) If a claim (i) is accepted by a self-insurer after June 30,
29 1990, and before August 1, 1997, (ii) involves only medical treatment,
30 (iii) does not involve payment of temporary disability compensation
31 under RCW 51.32.090, and (iv) at the time medical treatment is
32 concluded does not involve permanent disability, the claim may be
33 closed by the self-insurer, subject to reporting of claims to the
34 department in a manner prescribed by department rules adopted under
35 chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall
36 enter a written order, communicated to the worker, which contains the
37 following statement clearly set forth in bold-face type: "This order
38 constitutes notification that your claim is being closed with medical

1 benefits only, as provided. If for any reason you disagree with this
2 closure, you must protest in writing to the Department of Labor and
3 Industries, Olympia, within 60 days of the date you received this
4 order. The department will then review your claim and enter a further
5 determinative order."

6 (b) All determinations of permanent disability for claims accepted
7 under this subsection (8) by self-insurers shall be made by the self-
8 insured section of the department under subsections (1) through (4) of
9 this section.

10 (9)(a) If a claim: (i) Is accepted by a self-insurer after July
11 31, 1997; (ii)(A) involves only medical treatment, or medical treatment
12 and the payment of temporary disability compensation under RCW
13 51.32.090, and a determination of permanent partial disability, if
14 applicable, has been made by the self-insurer as authorized in this
15 subsection; or (B) involves only the payment of temporary disability
16 compensation under RCW 51.32.090 and a determination of permanent
17 partial disability, if applicable, has been made by the self-insurer as
18 authorized in this subsection; (iii) is one with respect to which the
19 department has not intervened under subsection (6) of this section; and
20 (iv) concerns an injured worker who has returned to work with the self-
21 insured employer of record, whether at the worker's previous job or at
22 a job that has comparable wages and benefits, the claim may be closed
23 by the self-insurer, subject to reporting of claims to the department
24 in a manner prescribed by department rules adopted under chapter 34.05
25 RCW.

26 (b) If a physician or licensed advanced registered nurse
27 practitioner submits a report to the self-insurer that concludes that
28 the worker's condition is fixed and stable and supports payment of a
29 permanent partial disability award, and if within fourteen days from
30 the date the self-insurer mailed the report to the attending or
31 treating physician or licensed advanced registered nurse practitioner,
32 the worker's attending or treating physician or licensed advanced
33 registered nurse practitioner disagrees in writing that the worker's
34 condition is fixed and stable, the self-insurer must get a supplemental
35 medical opinion from a provider on the department's approved examiner's
36 list before closing the claim. In the alternative, the self-insurer
37 may forward the claim to the department, which must review the claim
38 and enter a final order as provided for in RCW 51.52.050.

1 (c) Upon closure of a claim under this subsection (9), the self-
2 insurer shall enter a written order, communicated to the worker and the
3 department self-insurance section, which contains the following
4 statement clearly set forth in bold-face type: "This order constitutes
5 notification that your claim is being closed with such medical benefits
6 and temporary disability compensation as provided to date and with such
7 award for permanent partial disability, if any, as set forth below, and
8 with the condition that you have returned to work with the self-insured
9 employer. If for any reason you disagree with the conditions or
10 duration of your return to work or the medical benefits, temporary
11 disability compensation provided, or permanent partial disability that
12 has been awarded, you must protest in writing to the Department of
13 Labor and Industries, Self-Insurance Section, within sixty days of the
14 date you received this order. If you do not protest this order to the
15 department, this order will become final."

16 (d) All determinations of permanent partial disability for claims
17 accepted by self-insurers under this subsection (9) may be made by the
18 self-insurer or the self-insurer may request a determination by the
19 self-insured section of the department. All determinations shall be
20 made under subsections (1) through (4) of this section.

21 (10) If the department receives a protest of an order issued by a
22 self-insurer under subsections (7) through (9) of this section, the
23 self-insurer's closure order must be held in abeyance. The department
24 shall review the claim closure action and enter a further determinative
25 order as provided for in RCW 51.52.050. If no protest is timely filed,
26 the closing order issued by the self-insurer shall become final and
27 shall have the same force and effect as a department order that has
28 become final under RCW 51.52.050.

29 (11) If within two years of claim closure under subsections (7)
30 through (9) of this section, the department determines that the self-
31 insurer has made payment of benefits because of clerical error, mistake
32 of identity, or innocent misrepresentation or the department discovers
33 a violation of the conditions of claim closure, the department may
34 require the self-insurer to correct the benefits paid or payable. This
35 subsection (11) does not limit in any way the application of RCW
36 51.32.240.

37 (12) For the purposes of this section, "comparable wages and

1 benefits" means wages and benefits that are at least ninety-five
2 percent of the wages and benefits received by the worker at the time of
3 injury.

4 **Sec. 9.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993
5 c 271 s 1 are each reenacted and amended to read as follows:

6 (1) When the total disability is only temporary, the schedule of
7 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
8 the total disability continues.

9 (2) Any compensation payable under this section for children not in
10 the custody of the injured worker as of the date of injury shall be
11 payable only to such person as actually is providing the support for
12 such child or children pursuant to the order of a court of record
13 providing for support of such child or children.

14 (3)(a) As soon as recovery is so complete that the present earning
15 power of the worker, at any kind of work, is restored to that existing
16 at the time of the occurrence of the injury, the payments shall cease.
17 If and so long as the present earning power is only partially restored,
18 the payments shall:

19 (i) For claims for injuries that occurred before May 7, 1993,
20 continue in the proportion which the new earning power shall bear to
21 the old; or

22 (ii) For claims for injuries occurring on or after May 7, 1993,
23 equal eighty percent of the actual difference between the worker's
24 present wages and earning power at the time of injury, but: (A) The
25 total of these payments and the worker's present wages may not exceed
26 one hundred fifty percent of the average monthly wage in the state as
27 computed under RCW 51.08.018; (B) the payments may not exceed one
28 hundred percent of the entitlement as computed under subsection (1) of
29 this section; and (C) the payments may not be less than the worker
30 would have received if (a)(i) of this subsection had been applicable to
31 the worker's claim.

32 (b) No compensation shall be payable under this subsection (3)
33 unless the loss of earning power shall exceed five percent.

34 (4)(a) Whenever the employer of injury requests that a worker who
35 is entitled to temporary total disability under this chapter be
36 certified by a physician or licensed advanced registered nurse
37 practitioner as able to perform available work other than his or her

1 usual work, the employer shall furnish to the physician or licensed
2 advanced registered nurse practitioner, with a copy to the worker, a
3 statement describing the work available with the employer of injury in
4 terms that will enable the physician or licensed advanced registered
5 nurse practitioner to relate the physical activities of the job to the
6 worker's disability. The physician or licensed advanced registered
7 nurse practitioner shall then determine whether the worker is
8 physically able to perform the work described. The worker's temporary
9 total disability payments shall continue until the worker is released
10 by his or her physician or licensed advanced registered nurse
11 practitioner for the work, and begins the work with the employer of
12 injury. If the work thereafter comes to an end before the worker's
13 recovery is sufficient in the judgment of his or her physician or
14 licensed advanced registered nurse practitioner to permit him or her to
15 return to his or her usual job, or to perform other available work
16 offered by the employer of injury, the worker's temporary total
17 disability payments shall be resumed. Should the available work
18 described, once undertaken by the worker, impede his or her recovery to
19 the extent that in the judgment of his or her physician or licensed
20 advanced registered nurse practitioner he or she should not continue to
21 work, the worker's temporary total disability payments shall be resumed
22 when the worker ceases such work.

23 (b) Once the worker returns to work under the terms of this
24 subsection (4), he or she shall not be assigned by the employer to work
25 other than the available work described without the worker's written
26 consent, or without prior review and approval by the worker's physician
27 or licensed advanced registered nurse practitioner.

28 (c) If the worker returns to work under this subsection (4), any
29 employee health and welfare benefits that the worker was receiving at
30 the time of injury shall continue or be resumed at the level provided
31 at the time of injury. Such benefits shall not be continued or resumed
32 if to do so is inconsistent with the terms of the benefit program, or
33 with the terms of the collective bargaining agreement currently in
34 force.

35 (d) In the event of any dispute as to the worker's ability to
36 perform the available work offered by the employer, the department
37 shall make the final determination.

1 (5) No worker shall receive compensation for or during the day on
2 which injury was received or the three days following the same, unless
3 his or her disability shall continue for a period of fourteen
4 consecutive calendar days from date of injury: PROVIDED, That attempts
5 to return to work in the first fourteen days following the injury shall
6 not serve to break the continuity of the period of disability if the
7 disability continues fourteen days after the injury occurs.

8 (6) Should a worker suffer a temporary total disability and should
9 his or her employer at the time of the injury continue to pay him or
10 her the wages which he or she was earning at the time of such injury,
11 such injured worker shall not receive any payment provided in
12 subsection (1) of this section during the period his or her employer
13 shall so pay such wages.

14 (7) In no event shall the monthly payments provided in this section
15 exceed the applicable percentage of the average monthly wage in the
16 state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

22 (8) If the supervisor of industrial insurance determines that the
23 worker is voluntarily retired and is no longer attached to the work
24 force, benefits shall not be paid under this section.

25 **Sec. 10.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
26 as follows:

27 (1) One of the primary purposes of this title is to enable the
28 injured worker to become employable at gainful employment. To this
29 end, the department or self-insurers shall utilize the services of
30 individuals and organizations, public or private, whose experience,
31 training, and interests in vocational rehabilitation and retraining
32 qualify them to lend expert assistance to the supervisor of industrial
33 insurance in such programs of vocational rehabilitation as may be
34 reasonable to make the worker employable consistent with his or her
35 physical and mental status. Where, after evaluation and recommendation

1 by such individuals or organizations and prior to final evaluation of
2 the worker's permanent disability and in the sole opinion of the
3 supervisor or supervisor's designee, whether or not medical treatment
4 has been concluded, vocational rehabilitation is both necessary and
5 likely to enable the injured worker to become employable at gainful
6 employment, the supervisor or supervisor's designee may, in his or her
7 sole discretion, pay or, if the employer is a self-insurer, direct the
8 self-insurer to pay the cost as provided in subsection (3) of this
9 section.

10 (2) When in the sole discretion of the supervisor or the
11 supervisor's designee vocational rehabilitation is both necessary and
12 likely to make the worker employable at gainful employment, then the
13 following order of priorities shall be used:

14 (a) Return to the previous job with the same employer;

15 (b) Modification of the previous job with the same employer
16 including transitional return to work;

17 (c) A new job with the same employer in keeping with any
18 limitations or restrictions;

19 (d) Modification of a new job with the same employer including
20 transitional return to work;

21 (e) Modification of the previous job with a new employer;

22 (f) A new job with a new employer or self-employment based upon
23 transferable skills;

24 (g) Modification of a new job with a new employer;

25 (h) A new job with a new employer or self-employment involving on-
26 the-job training;

27 (i) Short-term retraining and job placement.

28 (3)(a) Except as provided in (b) of this subsection, costs for
29 vocational rehabilitation benefits allowed by the supervisor or
30 supervisor's designee under subsection (1) of this section may include
31 the cost of books, tuition, fees, supplies, equipment, transportation,
32 child or dependent care, and other necessary expenses for any such
33 worker in an amount not to exceed three thousand dollars in any fifty-
34 two week period except as authorized by RCW 51.60.060, and the cost of
35 continuing the temporary total disability compensation under RCW
36 51.32.090 while the worker is actively and successfully undergoing a
37 formal program of vocational rehabilitation.

1 (b) Beginning with vocational rehabilitation plans approved on or
2 after July 1, 1999, costs for vocational rehabilitation benefits
3 allowed by the supervisor or supervisor's designee under subsection (1)
4 of this section may include the cost of books, tuition, fees, supplies,
5 equipment, child or dependent care, and other necessary expenses for
6 any such worker in an amount not to exceed four thousand dollars in any
7 fifty-two week period except as authorized by RCW 51.60.060, and the
8 cost of transportation and continuing the temporary total disability
9 compensation under RCW 51.32.090 while the worker is actively and
10 successfully undergoing a formal program of vocational rehabilitation.

11 (c) The expenses allowed under (a) or (b) of this subsection may
12 include training fees for on-the-job training and the cost of
13 furnishing tools and other equipment necessary for self-employment or
14 reemployment. However, compensation or payment of retraining with job
15 placement expenses under (a) or (b) of this subsection may not be
16 authorized for a period of more than fifty-two weeks, except that such
17 period may, in the sole discretion of the supervisor after his or her
18 review, be extended for an additional fifty-two weeks or portion
19 thereof by written order of the supervisor.

20 (d) In cases where the worker is required to reside away from his
21 or her customary residence, the reasonable cost of board and lodging
22 shall also be paid.

23 (e) Costs paid under this subsection shall be chargeable to the
24 employer's cost experience or shall be paid by the self-insurer as the
25 case may be.

26 (4) In addition to the vocational rehabilitation expenditures
27 provided for under subsection (3) of this section, an additional five
28 thousand dollars may, upon authorization of the supervisor or the
29 supervisor's designee, be expended for: (a) Accommodations for an
30 injured worker that are medically necessary for the worker to
31 participate in an approved retraining plan; and (b) accommodations
32 necessary to perform the essential functions of an occupation in which
33 an injured worker is seeking employment, consistent with the retraining
34 plan or the recommendations of a vocational evaluation. The injured
35 worker's attending physician or licensed advanced registered nurse
36 practitioner must verify the necessity of the modifications or
37 accommodations. The total expenditures authorized in this subsection

1 and the expenditures authorized under RCW 51.32.250 shall not exceed
2 five thousand dollars.

3 (5) The department shall establish criteria to monitor the quality
4 and effectiveness of rehabilitation services provided by the
5 individuals and organizations used under subsection (1) of this
6 section. The state fund shall make referrals for vocational
7 rehabilitation services based on these performance criteria.

8 (6) The department shall engage in, where feasible and cost-
9 effective, a cooperative program with the state employment security
10 department to provide job placement services under this section.

11 (7) The benefits in this section shall be provided for the injured
12 workers of self-insured employers. Self-insurers shall report both
13 benefits provided and benefits denied under this section in the manner
14 prescribed by the department by rule adopted under chapter 34.05 RCW.
15 The director may, in his or her sole discretion and upon his or her own
16 initiative or at any time that a dispute arises under this section,
17 promptly make such inquiries as circumstances require and take such
18 other action as he or she considers will properly determine the matter
19 and protect the rights of the parties.

20 (8) Except as otherwise provided in this section, the benefits
21 provided for in this section are available to any otherwise eligible
22 worker regardless of the date of industrial injury. However, claims
23 shall not be reopened solely for vocational rehabilitation purposes.

24 **Sec. 11.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read
25 as follows:

26 Upon the occurrence of any injury to a worker entitled to
27 compensation under the provisions of this title, he or she shall
28 receive proper and necessary medical and surgical services at the hands
29 of a physician or licensed advanced registered nurse practitioner of
30 his or her own choice, if conveniently located, and proper and
31 necessary hospital care and services during the period of his or her
32 disability from such injury, but the same shall be limited in point of
33 duration as follows:

34 In the case of permanent partial disability, not to extend beyond
35 the date when compensation shall be awarded him or her, except when the
36 worker returned to work before permanent partial disability award is
37 made, in such case not to extend beyond the time when monthly

1 allowances to him or her shall cease; in case of temporary disability
2 not to extend beyond the time when monthly allowances to him or her
3 shall cease: PROVIDED, That after any injured worker has returned to
4 his or her work his or her medical and surgical treatment may be
5 continued if, and so long as, such continuation is deemed necessary by
6 the supervisor of industrial insurance to be necessary to his or her
7 more complete recovery; in case of a permanent total disability not to
8 extend beyond the date on which a lump sum settlement is made with him
9 or her or he or she is placed upon the permanent pension roll:
10 PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely
11 in his or her discretion, may authorize continued medical and surgical
12 treatment for conditions previously accepted by the department when
13 such medical and surgical treatment is deemed necessary by the
14 supervisor of industrial insurance to protect such worker's life or
15 provide for the administration of medical and therapeutic measures
16 including payment of prescription medications, but not including those
17 controlled substances currently scheduled by the state board of
18 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50
19 RCW, which are necessary to alleviate continuing pain which results
20 from the industrial injury. In order to authorize such continued
21 treatment the written order of the supervisor of industrial insurance
22 issued in advance of the continuation shall be necessary.

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

31 **Sec. 12.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read
32 as follows:

33 Physicians or licensed advanced registered nurse practitioners
34 examining or attending injured workers under this title shall comply
35 with rules and regulations adopted by the director, and shall make such
36 reports as may be requested by the department or self-insurer upon the
37 condition or treatment of any such worker, or upon any other matters

1 concerning such workers in their care. Except under RCW 49.17.210 and
2 49.17.250, all medical information in the possession or control of any
3 person and relevant to the particular injury in the opinion of the
4 department pertaining to any worker whose injury or occupational
5 disease is the basis of a claim under this title shall be made
6 available at any stage of the proceedings to the employer, the
7 claimant's representative, and the department upon request, and no
8 person shall incur any legal liability by reason of releasing such
9 information.

10 **Sec. 13.** RCW 51.36.110 and 1994 c 154 s 312 are each amended to
11 read as follows:

12 The director of the department of labor and industries or the
13 director's authorized representative shall have the authority to:

14 (1) Conduct audits and investigations of providers of medical,
15 chiropractic, dental, vocational, and other health services furnished
16 to industrially injured workers pursuant to Title 51 RCW. In the
17 conduct of such audits or investigations, the director or the
18 director's authorized representatives may examine all records, or
19 portions thereof, including patient records, for which services were
20 rendered by a health services provider and reimbursed by the
21 department, notwithstanding the provisions of any other statute which
22 may make or purport to make such records privileged or confidential:
23 PROVIDED, That no original patient records shall be removed from the
24 premises of the health services provider, and that the disclosure of
25 any records or information obtained under authority of this section by
26 the department of labor and industries is prohibited and constitutes a
27 violation of RCW 42.52.050, unless such disclosure is directly
28 connected to the official duties of the department: AND PROVIDED
29 FURTHER, That the disclosure of patient information as required under
30 this section shall not subject any physician, licensed advanced
31 registered nurse practitioner, or other health services provider to any
32 liability for breach of any confidential relationships between the
33 provider and the patient: AND PROVIDED FURTHER, That the director or
34 the director's authorized representative shall destroy all copies of
35 patient medical records in their possession upon completion of the
36 audit, investigation, or proceedings;

1 (2) Approve or deny applications to participate as a provider of
2 services furnished to industrially injured workers pursuant to Title 51
3 RCW; and

4 (3) Terminate or suspend eligibility to participate as a provider
5 of services furnished to industrially injured workers pursuant to Title
6 51 RCW.

7 **Sec. 14.** RCW 51.48.060 and 1985 c 347 s 6 are each amended to read
8 as follows:

9 Any physician or licensed advanced registered nurse practitioner
10 who fails, neglects or refuses to file a report with the director, as
11 required by this title, within five days of the date of treatment,
12 showing the condition of the injured worker at the time of treatment,
13 a description of the treatment given, and an estimate of the probable
14 duration of the injury, or who fails or refuses to render all necessary
15 assistance to the injured worker, as required by this title, shall be
16 subject to a civil penalty determined by the director but not to exceed
17 two hundred fifty dollars.

18 **Sec. 15.** RCW 51.52.010 and 2003 c 224 s 1 are each amended to read
19 as follows:

20 There shall be a "board of industrial insurance appeals,"
21 hereinafter called the "board," consisting of three members appointed
22 by the governor, with the advice and consent of the senate, as
23 hereinafter provided. One shall be a representative of the public and
24 a lawyer, appointed from a mutually agreed to list of not less than
25 three active or judicial members of the Washington state bar
26 association, submitted to the governor by the two organizations defined
27 below, and such member shall be the chairperson of said board. The
28 second member shall be a representative of the majority of workers
29 engaged in employment under this title and selected from a list of not
30 less than three names submitted to the governor by an organization,
31 statewide in scope, which through its affiliates embraces a cross
32 section and a majority of the organized labor of the state. The third
33 member shall be a representative of employers under this title, and
34 appointed from a list of at least three names submitted to the governor
35 by a recognized statewide organization of employers, representing a
36 majority of employers. The initial terms of office of the members of

1 the board shall be for six, four, and two years respectively.
2 Thereafter all terms shall be for a period of six years. Each member
3 of the board shall be eligible for reappointment and shall hold office
4 until his or her successor is appointed and qualified. In the event of
5 a vacancy the governor is authorized to appoint a successor to fill the
6 unexpired term of his or her predecessor. All appointments to the
7 board shall be made in conformity with the foregoing plan. In the
8 event a board member becomes incapacitated in excess of thirty days
9 either due to his or her illness or that of an immediate family member
10 as determined by a request for family leave or as certified by the
11 affected member's treating physician or licensed advanced registered
12 nurse practitioner, the governor shall appoint an acting member to
13 serve pro tem. Such an appointment shall be made in conformity with
14 the foregoing plan, except that the list of candidates shall be
15 submitted to the governor not more than fifteen days after the affected
16 organizations are notified of the incapacity and the governor shall
17 make the appointment within fifteen days after the list is submitted.
18 The temporary member shall serve until such time as the affected member
19 is able to reassume his or her duties by returning from requested
20 family leave or as determined by the treating physician or licensed
21 advanced registered nurse practitioner or until the affected member's
22 term expires, whichever occurs first. Whenever the workload of the
23 board and its orderly and expeditious disposition shall necessitate,
24 the governor may appoint two additional pro-tem members in addition to
25 the regular members. Such appointments shall be for a definite period
26 of time, and shall be made from lists submitted respectively by labor
27 and industry as in the case of regular members. One pro-tem member
28 shall be a representative of labor and one shall be a representative of
29 industry. Members shall devote their entire time to the duties of the
30 board and shall receive for their services a salary as fixed by the
31 governor in accordance with the provisions of RCW 43.03.040 which shall
32 be in addition to travel expenses in accordance with RCW 43.03.050 and
33 43.03.060 as now existing or hereafter amended. Headquarters for the
34 board shall be located in Olympia. The board shall adopt a seal which
35 shall be judicially recognized.

36 NEW SECTION. **Sec. 16.** A new section is added to chapter 51.36 RCW
37 to read as follows:

1 Licensed advanced registered nurse practitioners are recognized as
2 independent practitioners and, subject to the provisions of this title,
3 the health services available to an injured worker under RCW 51.36.010
4 include health services provided by licensed advanced registered nurse
5 practitioners within their scope of practice.

6 NEW SECTION. **Sec. 17.** By December 1, 2006, the department of
7 labor and industries shall report to the senate committee on commerce
8 and trade and the house committee on commerce and labor, or successor
9 committees, on the implementation of this act, including but not
10 limited to the effects of this act on injured worker outcomes, claim
11 costs, and disputed claims.

12 NEW SECTION. **Sec. 18.** This act takes effect July 1, 2004.

13 NEW SECTION. **Sec. 19.** This act expires June 30, 2007.

14 NEW SECTION. **Sec. 20.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

Passed by the House February 12, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.