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**SENATE BILL 5474**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senator Keiser

AN ACT Relating to allowing self-insurers to accept certain industrial insurance claims, permitting self-insurers to send duplicates of certain orders made by the department of labor and industries, and establishing a work group to consider whether current penalties on self-insurers are sufficient; amending RCW 51.14.130 and 51.52.050; creating a new section; and providing an expiration date.

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

**Sec.**  RCW 51.14.130 and 1993 c 122 s 3 are each amended to read as follows:

(1) For any industrial insurance claim for which the worker may be entitled to benefits other than medical treatment only, when a self-insurer has determined to allow an industrial insurance claim, the self-insurer must issue an order allowing the claim to the injured worker, attending medical provider, and the department within sixty days from the date that the claim is filed. The order of the self-insurer must be issued consistent with rules adopted by the department. An order attempting to segregate conditions in a claim must be approved by the department.

(2) The self-insurer ((~~shall~~)) must request ((~~allowance~~)) approval of any segregation of conditions in a claim or denial of a claim within sixty days from the date that the claim is filed.

(3) If the self-insurer fails to act within sixty days from the date that the claim is filed, the department ((~~shall~~)) must promptly intervene and adjudicate the claim.

(4) The department is authorized to adopt rules as necessary to implement this section, including the:

(a) Form of orders allowing industrial insurance claims consistent with the standards followed by the department; and

(b) Process for a self-insurer to request and obtain an interlocutory order from the department allowing the self-insurer additional time to investigate the validity of a claim.

**Sec.**  RCW 51.52.050 and 2011 c 290 s 9 are each amended to read as follows:

(1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. In the event the department has made an order communicating the closure of a claim of a self-insured employer, the self-insured employer may serve the department order provided the self-insured employer does so using a secure, verifiable nonelectronic means of delivery and includes the department prescribed notice explaining the contents of the order and any protest or appeal rights. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address as shown by the records of the department. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self‑insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

NEW SECTION. **Sec.**  (1) The director of labor and industries shall appoint a collaborative work group composed of eight members:

(a) Three representing workers of self-insurers;

(b) Three representing self-insurers; and

(c) Two ex officio members, without a vote, one of whom shall be the representative of the office of the ombuds for workers of industrial insurance self-insured employers and the other the representative of the department of labor and industries.

(2) The member representing the department shall be chair.

(3) The work group must evaluate:

(a) Issues related to whether the current penalties for self-insurers and third-party administrators are sufficient to support:

(i) The mandate to provide sure and certain relief for workers injured in their work and their families and dependents; and

(ii) The legislature's finding that the workers' compensation system should be designed to focus on achieving the best outcomes for injured workers; and

(b) Other issues as the work group deems appropriate.

(4) The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall provide staff support for the work group and pay all expenses of the work group.

(6) The work group shall provide a report that includes any findings, recommendations, and draft legislation, to the governor and the appropriate committees of the legislature, by November 1, 2019.

(7) This section expires December 31, 2019.

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