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HOUSE BILL 1397

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Hurst, Conway, Campbell, Dunshee and Kastama

Read first time 01/22/1999. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to medical issues under the industrial insurance  
2 system; amending RCW 51.04.030, 51.32.110, and 51.36.070; and creating  
3 a new section.

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

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

7            (1) The director shall supervise the providing of prompt and  
8 efficient care and treatment, including care provided by physician  
9 assistants governed by the provisions of chapters 18.57A and 18.71A  
10 RCW, acting under a supervising physician, and including chiropractic  
11 care, to workers injured during the course of their employment at the  
12 least cost consistent with promptness and efficiency, without  
13 discrimination or favoritism, and with as great uniformity as the  
14 various and diverse surrounding circumstances and locations of  
15 industries will permit and to that end shall, from time to time,  
16 establish and adopt and supervise the administration of printed forms,  
17 rules, regulations, and practices for the furnishing of such care and  
18 treatment(~~(:—PROVIDED, That)~~). This subsection is subject to the  
19 following:

1       (a) The medical coverage decisions of the department do not  
2 constitute a "rule" as used in RCW 34.05.010(16), nor are such  
3 decisions subject to the rule-making provisions of chapter 34.05 RCW  
4 except that criteria for establishing medical coverage decisions shall  
5 be adopted by rule after consultation with the workers' compensation  
6 advisory committee established in RCW 51.04.110(~~(:—PROVIDED FURTHER,~~  
7 ~~That))~~);

8       (b) The department may recommend to an injured worker particular  
9 health care services and providers where specialized treatment is  
10 indicated or where cost effective payment levels or rates are obtained  
11 by the department(~~(:—AND PROVIDED FURTHER, That))~~);

12       (c) The department may enter into contracts for goods and services  
13 including, but not limited to, durable medical equipment so long as  
14 state-wide access to quality service is maintained for injured workers;  
15 and

16       (d) A department employee is not authorized to practice in any  
17 field or specialty in the course of or incident to his or her official  
18 duties unless the employee is currently licensed, certified, or  
19 registered as a provider in that field or specialty. The department  
20 shall adopt rules implementing this subsection (1)(d).

21       (2) The director shall, in consultation with interested persons,  
22 establish and, in his or her discretion, periodically change as may be  
23 necessary, and make available a fee schedule of the maximum charges to  
24 be made by any physician, surgeon, chiropractor, hospital, druggist,  
25 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,  
26 acting under a supervising physician or other agency or person  
27 rendering services to injured workers. The department shall coordinate  
28 with other state purchasers of health care services to establish as  
29 much consistency and uniformity in billing and coding practices as  
30 possible, taking into account the unique requirements and differences  
31 between programs. No service covered under this title, including  
32 services provided to injured workers, whether aliens or other injured  
33 workers, who are not residing in the United States at the time of  
34 receiving the services, shall be charged or paid at a rate or rates  
35 exceeding those specified in such fee schedule, and no contract  
36 providing for greater fees shall be valid as to the excess. The  
37 establishment of such a schedule, exclusive of conversion factors, does  
38 not constitute "agency action" as used in RCW 34.05.010(3), nor does  
39 such a fee schedule constitute a "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 51.32.110 and 1997 c 325 s 3 are each amended to read  
11 as follows:

12 (1) Any worker entitled to receive any benefits or claiming such  
13 under this title shall, if requested by the department or self-insurer  
14 as authorized under this title, submit himself or herself for medical  
15 examination, at a time and from time to time, at a place reasonably  
16 convenient for the worker and as may be provided by the rules of the  
17 department. An injured worker, whether an alien or other injured  
18 worker, who is not residing in the United States at the time that a  
19 medical examination is requested may be required to submit to an  
20 examination at any location in the United States determined by the  
21 department or self-insurer.

22 (2) If the worker refuses to submit to medical examination, or  
23 obstructs the same, or, if any injured worker shall persist in  
24 unsanitary or injurious practices which tend to imperil or retard his  
25 or her recovery, or shall refuse to submit to such medical or surgical  
26 treatment as is reasonably essential to his or her recovery or refuse  
27 or obstruct evaluation or examination for the purpose of vocational  
28 rehabilitation or does not cooperate in reasonable efforts at such  
29 rehabilitation, the department or the self-insurer upon approval by the  
30 department, with notice to the worker may suspend any further action on  
31 any claim of such worker so long as such refusal, obstruction,  
32 noncooperation, or practice continues and reduce, suspend, or deny any  
33 compensation for such period: PROVIDED, That the department or the  
34 self-insurer shall not suspend any further action on any claim of a  
35 worker or reduce, suspend, or deny any compensation if a worker has  
36 good cause for refusing to submit to or to obstruct any examination,  
37 evaluation, treatment or practice requested by the department or  
38 required under this section.

1 (3) If the worker necessarily incurs traveling expenses in  
2 attending the examination pursuant to the request of the department,  
3 such traveling expenses shall be repaid to him or her out of the  
4 accident fund upon proper voucher and audit or shall be repaid by the  
5 self-insurer, as the case may be.

6 (4)(a) If the medical examination required by this section causes  
7 the worker to be absent from his or her work without pay:

8 (i) In the case of a worker insured by the department, the worker  
9 shall be paid compensation out of the accident fund in an amount equal  
10 to his or her usual wages for the time lost from work while attending  
11 the medical examination; or

12 (ii) In the case of a worker of a self-insurer, the self-insurer  
13 shall pay the worker an amount equal to his or her usual wages for the  
14 time lost from work while attending the medical examination.

15 (b) This subsection (4) shall apply prospectively to all claims  
16 regardless of the date of injury.

17 **Sec. 3.** RCW 51.36.070 and 1977 ex.s. c 350 s 60 are each amended  
18 to read as follows:

19 (1) Subject to the requirements of this title, whenever the  
20 director or the self-insurer deems it necessary ((in order to resolve  
21 any medical issue, a)) to order a medical examination of a worker, the  
22 worker shall submit to examination by a ((physician or physicians))  
23 provider or providers selected by the director, with the rendition of  
24 a report to the person ordering the examination. The director, in his  
25 or her discretion, may charge the cost of such examination or  
26 examinations to the self-insurer or to the medical aid fund as the case  
27 may be. The cost of said examination shall include payment to the  
28 worker of reasonable expenses connected therewith.

29 (2) Examinations by the worker's treating provider or providers may  
30 be ordered whenever necessary to resolve a medical issue. Examinations  
31 by independent examiners may be ordered only in the following  
32 circumstances:

33 (a) To resolve a disagreement among the treating providers  
34 concerning the best course of treatment or the need for continuing  
35 treatment;

36 (b) To determine whether the worker's condition is fixed and stable  
37 after completion of a course of treatment, if the treating provider  
38 agrees that the course of treatment is complete. If the treating

1 provider does not agree that the course of treatment is complete, an  
2 examination by an independent examiner may be ordered under this  
3 subsection only if the examiner is chosen by agreement between the  
4 worker and the department or self-insurer;

5 (c) To provide consultation to the worker's treating provider when  
6 the care of the worker has exceeded practice parameters established by  
7 the department. The consultation is limited to reviewing diagnoses,  
8 determining the reason that care has exceeded practice parameters,  
9 and/or providing suggestions for alternate diagnoses and treatment  
10 procedures.

11 (3) The course of treatment or care, including emergency services,  
12 for an accepted condition may not be interrupted or delayed pending the  
13 examination report of an independent examiner unless the director or  
14 designee finds that the treatment or care is not medically necessary.  
15 This subsection does not apply to procedures, determined by department  
16 rule, that can be delayed without harm to the injured worker until a  
17 consultation opinion is obtained.

18 (4) If the department or self-insurer relies on the report of an  
19 independent examiner to deny, limit, or terminate benefits to a worker,  
20 the examiner must be currently licensed, certified, or registered to  
21 practice in the same field or specialty as the claimant's treating  
22 provider or providers.

23 (5) Any provider licensed to practice in medicine and surgery under  
24 chapter 18.71 RCW, osteopathic medicine and surgery under chapter 18.57  
25 RCW, podiatric medicine and surgery under chapter 18.22 RCW, dentistry  
26 under chapter 18.30 RCW, chiropractic under chapter 18.25 RCW, and  
27 psychology under chapter 18.83 RCW may be an independent examiner,  
28 within the appropriate scope of practice for the examination to be  
29 performed and subject to department rules regarding approval as an  
30 independent examiner.

31 (6) For purposes of this section, "independent examiner" means a  
32 provider or panel of providers, none of whom are a treating provider  
33 for the worker being examined.

34 (7) This section does not apply to special examinations for  
35 determining permanent disabilities.

36 NEW SECTION. Sec. 4. This act applies to all medical  
37 examinations, other than special examinations for determining permanent  
38 disabilities, ordered by the department of labor and industries or a

1 self-insured employer under Title 51 RCW on or after the effective date  
2 of this act.

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