

ESHB 1725 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

ADOPTED 04/05/2011

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 51.04.030 and 2004 c 65 s 1 are each amended to read  
4 as follows:

5 (1) The director shall supervise the providing of prompt and  
6 efficient care and treatment, including care provided by physician  
7 assistants governed by the provisions of chapters 18.57A and 18.71A  
8 RCW, acting under a supervising physician, including chiropractic care,  
9 and including care provided by licensed advanced registered nurse  
10 practitioners, to workers injured during the course of their employment  
11 at the least cost consistent with promptness and efficiency, without  
12 discrimination or favoritism, and with as great uniformity as the  
13 various and diverse surrounding circumstances and locations of  
14 industries will permit and to that end shall, from time to time,  
15 establish and adopt and supervise the administration of printed forms,  
16 rules, regulations, and practices for the furnishing of such care and  
17 treatment: PROVIDED, That the medical coverage decisions of the  
18 department do not constitute a "rule" as used in RCW 34.05.010(16), nor  
19 are such decisions subject to the rule-making provisions of chapter  
20 34.05 RCW except that criteria for establishing medical coverage  
21 decisions shall be adopted by rule after consultation with the workers'  
22 compensation advisory committee established in RCW 51.04.110: PROVIDED  
23 FURTHER, That the department may recommend to an injured worker  
24 particular health care services and providers where specialized  
25 treatment is indicated or where cost effective payment levels or rates  
26 are obtained by the department: AND PROVIDED FURTHER, That the  
27 department may enter into contracts for goods and services including,  
28 but not limited to, durable medical equipment so long as statewide  
29 access to quality service is maintained for injured workers.

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

22 (3) The director or self-insurer, as the case may be, shall make a  
23 record of the commencement of every disability and the termination  
24 thereof and, when bills are rendered for the care and treatment of  
25 injured workers, shall approve and pay those which conform to the  
26 adopted rules, regulations, established fee schedules, and practices of  
27 the director and may reject any bill or item thereof incurred in  
28 violation of the principles laid down in this section or the rules,  
29 regulations, or the established fee schedules and rules and regulations  
30 adopted under it.

31 **Sec. 2.** RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as  
32 follows:

33 Any notice or order required by this title to be mailed to any  
34 employer may be served in the manner prescribed by law for personal  
35 service of summons and complaint in the commencement of actions in the  
36 superior courts of the state, but if the notice or order is mailed, it  
37 shall be addressed to the address of the employer as shown by the

1 records of the department, or, if no such address is shown, to such  
2 address as the department is able to ascertain by reasonable effort.  
3 If requested by the employer, any notice or order may be sent by secure  
4 electronic means except orders communicating the closure of a claim.  
5 Correspondence and notices sent electronically are considered received  
6 on the date sent by the department. Failure of the employer to receive  
7 such notice or order whether served or mailed shall not release the  
8 employer from any tax or any increases or penalties thereon.

9       **Sec. 3.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read  
10 as follows:

11       (1) If the injured worker or beneficiary elects to seek damages  
12 from the third person, any recovery made shall be distributed as  
13 follows:

14       (a) The costs and reasonable attorneys' fees shall be paid  
15 proportionately by the injured worker or beneficiary and the department  
16 and/or self-insurer: PROVIDED, That the department and/or self-insurer  
17 may require court approval of costs and attorneys' fees or may petition  
18 a court for determination of the reasonableness of costs and attorneys'  
19 fees;

20       (b) The injured worker or beneficiary shall be paid twenty-five  
21 percent of the balance of the award: PROVIDED, That in the event of a  
22 compromise and settlement by the parties, the injured worker or  
23 beneficiary may agree to a sum less than twenty-five percent;

24       (c) The department and/or self-insurer shall be paid the balance of  
25 the recovery made, but only to the extent necessary to reimburse the  
26 department and/or self-insurer for benefits paid;

27       (i) The department and/or self-insurer shall bear its proportionate  
28 share of the costs and reasonable attorneys' fees incurred by the  
29 worker or beneficiary to the extent of the benefits paid under this  
30 title: PROVIDED, That the department's and/or self-insurer's  
31 proportionate share shall not exceed one hundred percent of the costs  
32 and reasonable attorneys' fees;

33       (ii) The department's and/or self-insurer's proportionate share of  
34 the costs and reasonable attorneys' fees shall be determined by  
35 dividing the gross recovery amount into the benefits paid amount and  
36 multiplying this percentage times the costs and reasonable attorneys'  
37 fees incurred by the worker or beneficiary;

1 (iii) The department's and/or self-insurer's reimbursement share  
2 shall be determined by subtracting their proportionate share of the  
3 costs and reasonable attorneys' fees from the benefits paid amount;

4 (d) Any remaining balance shall be paid to the injured worker or  
5 beneficiary; and

6 (e) Thereafter no payment shall be made to or on behalf of a worker  
7 or beneficiary by the department and/or self-insurer for such injury  
8 until the amount of any further compensation and benefits shall equal  
9 any such remaining balance minus the department's and/or self-insurer's  
10 proportionate share of the costs and reasonable attorneys' fees in  
11 regards to the remaining balance. This proportionate share shall be  
12 determined by dividing the gross recovery amount into the remaining  
13 balance amount and multiplying this percentage times the costs and  
14 reasonable attorneys' fees incurred by the worker or beneficiary.  
15 Thereafter, such benefits shall be paid by the department and/or self-  
16 insurer to or on behalf of the worker or beneficiary as though no  
17 recovery had been made from a third person.

18 (2) The recovery made shall be subject to a lien by the department  
19 and/or self-insurer for its share under this section.

20 (3) The department or self-insurer has sole discretion to  
21 compromise the amount of its lien. In deciding whether or to what  
22 extent to compromise its lien, the department or self-insurer shall  
23 consider at least the following:

24 (a) The likelihood of collection of the award or settlement as may  
25 be affected by insurance coverage, solvency, or other factors relating  
26 to the third person;

27 (b) Factual and legal issues of liability as between the injured  
28 worker or beneficiary and the third person. Such issues include but  
29 are not limited to possible contributory negligence and novel theories  
30 of liability; and

31 (c) Problems of proof faced in obtaining the award or settlement.

32 (4) In an action under this section, the self-insurer may act on  
33 behalf and for the benefit of the department to the extent of any  
34 compensation and benefits paid or payable from state funds.

35 (5) It shall be the duty of the person to whom any recovery is paid  
36 before distribution under this section to advise the department or  
37 self-insurer of the fact and amount of such recovery, the costs and

1 reasonable attorneys' fees associated with the recovery, and to  
2 distribute the recovery in compliance with this section.

3 (6) The distribution of any recovery made by award or settlement of  
4 the third party action shall be confirmed by department order, served  
5 by (~~registered or certified mail~~) a method for which receipt can be  
6 confirmed or tracked, and shall be subject to chapter 51.52 RCW. In  
7 the event the order of distribution becomes final under chapter 51.52  
8 RCW, the director or the director's designee may file with the clerk of  
9 any county within the state a warrant in the amount of the sum  
10 representing the unpaid lien plus interest accruing from the date the  
11 order became final. The clerk of the county in which the warrant is  
12 filed shall immediately designate a superior court cause number for  
13 such warrant and the clerk shall cause to be entered in the judgment  
14 docket under the superior court cause number assigned to the warrant,  
15 the name of such worker or beneficiary mentioned in the warrant, the  
16 amount of the unpaid lien plus interest accrued and the date when the  
17 warrant was filed. The amount of such warrant as docketed shall become  
18 a lien upon the title to and interest in all real and personal property  
19 of the injured worker or beneficiary against whom the warrant is  
20 issued, the same as a judgment in a civil case docketed in the office  
21 of such clerk. The sheriff shall then proceed in the same manner and  
22 with like effect as prescribed by law with respect to execution or  
23 other process issued against rights or property upon judgment in the  
24 superior court. Such warrant so docketed shall be sufficient to  
25 support the issuance of writs of garnishment in favor of the department  
26 in the manner provided by law in the case of judgment, wholly or  
27 partially unsatisfied. The clerk of the court shall be entitled to a  
28 filing fee under RCW 36.18.012(10), which shall be added to the amount  
29 of the warrant. A copy of such warrant shall be mailed to the injured  
30 worker or beneficiary within three days of filing with the clerk.

31 (7) The director, or the director's designee, may issue to any  
32 person, firm, corporation, municipal corporation, political subdivision  
33 of the state, public corporation, or agency of the state, a notice and  
34 order to withhold and deliver property of any kind if he or she has  
35 reason to believe that there is in the possession of such person, firm,  
36 corporation, municipal corporation, political subdivision of the state,  
37 public corporation, or agency of the state, property which is due,  
38 owing, or belonging to any worker or beneficiary upon whom a warrant

1 has been served by the department for payments due to the state fund.  
2 The notice and order to withhold and deliver shall be served by the  
3 sheriff of the county or by the sheriff's deputy; by ~~((certified mail,~~  
4 ~~return receipt requested))~~ a method for which receipt can be confirmed  
5 or tracked; or by any authorized representatives of the director. Any  
6 person, firm, corporation, municipal corporation, political subdivision  
7 of the state, public corporation, or agency of the state upon whom  
8 service has been made shall answer the notice within twenty days  
9 exclusive of the day of service, under oath and in writing, and shall  
10 make true answers to the matters inquired of in the notice and order to  
11 withhold and deliver. In the event there is in the possession of the  
12 party named and served with such notice and order, any property which  
13 may be subject to the claim of the department, such property shall be  
14 delivered forthwith to the director or the director's authorized  
15 representative upon demand. If the party served and named in the  
16 notice and order fails to answer the notice and order within the time  
17 prescribed in this section, the court may, after the time to answer  
18 such order has expired, render judgment by default against the party  
19 named in the notice for the full amount claimed by the director in the  
20 notice together with costs. In the event that a notice to withhold and  
21 deliver is served upon an employer and the property found to be subject  
22 thereto is wages, the employer may assert in the answer to all  
23 exemptions provided for by chapter 6.27 RCW to which the wage earner  
24 may be entitled.

25 **Sec. 4.** RCW 51.32.240 and 2008 c 280 s 2 are each amended to read  
26 as follows:

27 (1)(a) Whenever any payment of benefits under this title is made  
28 because of clerical error, mistake of identity, innocent  
29 misrepresentation by or on behalf of the recipient thereof mistakenly  
30 acted upon, or any other circumstance of a similar nature, all not  
31 induced by willful misrepresentation, the recipient thereof shall repay  
32 it and recoupment may be made from any future payments due to the  
33 recipient on any claim with the state fund or self-insurer, as the case  
34 may be. The department or self-insurer, as the case may be, must make  
35 claim for such repayment or recoupment within one year of the making of  
36 any such payment or it will be deemed any claim therefor has been  
37 waived.

1 (b) Except as provided in subsections (3), (4), and (5) of this  
2 section, the department may only assess an overpayment of benefits  
3 because of adjudicator error when the order upon which the overpayment  
4 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.  
5 "Adjudicator error" includes the failure to consider information in the  
6 claim file, failure to secure adequate information, or an error in  
7 judgment.

8 (c) The director, pursuant to rules adopted in accordance with the  
9 procedures provided in the administrative procedure act, chapter 34.05  
10 RCW, may exercise his or her discretion to waive, in whole or in part,  
11 the amount of any such timely claim where the recovery would be against  
12 equity and good conscience.

13 (2) Whenever the department or self-insurer fails to pay benefits  
14 because of clerical error, mistake of identity, or innocent  
15 misrepresentation, all not induced by recipient willful  
16 misrepresentation, the recipient may request an adjustment of benefits  
17 to be paid from the state fund or by the self-insurer, as the case may  
18 be, subject to the following:

19 (a) The recipient must request an adjustment in benefits within one  
20 year from the date of the incorrect payment or it will be deemed any  
21 claim therefore has been waived.

22 (b) The recipient may not seek an adjustment of benefits because of  
23 adjudicator error. Adjustments due to adjudicator error are addressed  
24 by the filing of a written request for reconsideration with the  
25 department of labor and industries or an appeal with the board of  
26 industrial insurance appeals within sixty days from the date the order  
27 is communicated as provided in RCW 51.52.050. "Adjudicator error"  
28 includes the failure to consider information in the claim file, failure  
29 to secure adequate information, or an error in judgment.

30 (3) Whenever the department issues an order rejecting a claim for  
31 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for  
32 temporary disability benefits has been paid by a self-insurer pursuant  
33 to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the  
34 recipient thereof shall repay such benefits and recoupment may be made  
35 from any future payments due to the recipient on any claim with the  
36 state fund or self-insurer, as the case may be. The director, under  
37 rules adopted in accordance with the procedures provided in the  
38 administrative procedure act, chapter 34.05 RCW, may exercise

1 discretion to waive, in whole or in part, the amount of any such  
2 payments where the recovery would be against equity and good  
3 conscience.

4 (4) Whenever any payment of benefits under this title has been made  
5 pursuant to an adjudication by the department or by order of the board  
6 or any court and timely appeal therefrom has been made where the final  
7 decision is that any such payment was made pursuant to an erroneous  
8 adjudication, the recipient thereof shall repay it and recoupment may  
9 be made from any future payments due to the recipient on any claim  
10 whether state fund or self-insured.

11 (a) The director, pursuant to rules adopted in accordance with the  
12 procedures provided in the administrative procedure act, chapter 34.05  
13 RCW, may exercise discretion to waive, in whole or in part, the amount  
14 of any such payments where the recovery would be against equity and  
15 good conscience. However, if the director waives in whole or in part  
16 any such payments due a self-insurer, the self-insurer shall be  
17 reimbursed the amount waived from the self-insured employer overpayment  
18 reimbursement fund.

19 (b) The department shall collect information regarding self-insured  
20 claim overpayments resulting from final decisions of the board and the  
21 courts, and recoup such overpayments on behalf of the self-insurer from  
22 any open, new, or reopened state fund or self-insured claims. The  
23 department shall forward the amounts collected to the self-insurer to  
24 whom the payment is owed. The department may provide information as  
25 needed to any self-insurers from whom payments may be collected on  
26 behalf of the department or another self-insurer. Notwithstanding RCW  
27 51.32.040, any self-insurer requested by the department to forward  
28 payments to the department pursuant to this subsection shall pay the  
29 department directly. The department shall credit the amounts recovered  
30 to the appropriate fund, or forward amounts collected to the  
31 appropriate self-insurer, as the case may be.

32 (c) If a self-insurer is not fully reimbursed within twenty-four  
33 months of the first attempt at recovery through the collection process  
34 pursuant to this subsection and by means of processes pursuant to  
35 subsection (6) of this section, the self-insurer shall be reimbursed  
36 for the remainder of the amount due from the self-insured employer  
37 overpayment reimbursement fund.



1 (d) For purposes of this subsection, "recipient" does not include  
2 health service providers whose treatment or services were authorized by  
3 the department or self-insurer.

4 (e) The department or self-insurer shall first attempt recovery of  
5 overpayments for health services from any entity that provided health  
6 insurance to the worker to the extent that the health insurance entity  
7 would have provided health insurance benefits but for workers'  
8 compensation coverage.

9 (5)(a) Whenever any payment of benefits under this title has been  
10 induced by willful misrepresentation the recipient thereof shall repay  
11 any such payment together with a penalty of fifty percent of the total  
12 of any such payments and the amount of such total sum may be recouped  
13 from any future payments due to the recipient on any claim with the  
14 state fund or self-insurer against whom the willful misrepresentation  
15 was committed, as the case may be, and the amount of such penalty shall  
16 be placed in the supplemental pension fund. Such repayment or  
17 recoupment must be demanded or ordered within three years of the  
18 discovery of the willful misrepresentation.

19 (b) For purposes of this subsection (5), it is willful  
20 misrepresentation for a person to obtain payments or other benefits  
21 under this title in an amount greater than that to which the person  
22 otherwise would be entitled. Willful misrepresentation includes:

23 (i) Willful false statement; or

24 (ii) Willful misrepresentation, omission, or concealment of any  
25 material fact.

26 (c) For purposes of this subsection (5), "willful" means a  
27 conscious or deliberate false statement, misrepresentation, omission,  
28 or concealment of a material fact with the specific intent of  
29 obtaining, continuing, or increasing benefits under this title.

30 (d) For purposes of this subsection (5), failure to disclose a  
31 work-type activity must be willful in order for a misrepresentation to  
32 have occurred.

33 (e) For purposes of this subsection (5), a material fact is one  
34 which would result in additional, increased, or continued benefits,  
35 including but not limited to facts about physical restrictions, or  
36 work-type activities which either result in wages or income or would be  
37 reasonably expected to do so. Wages or income include the receipt of  
38 any goods or services. For a work-type activity to be reasonably

1 expected to result in wages or income, a pattern of repeated activity  
2 must exist. For those activities that would reasonably be expected to  
3 result in wages or produce income, but for which actual wage or income  
4 information cannot be reasonably determined, the department shall  
5 impute wages pursuant to RCW 51.08.178(4).

6 (6) The worker, beneficiary, or other person affected thereby shall  
7 have the right to contest an order assessing an overpayment pursuant to  
8 this section in the same manner and to the same extent as provided  
9 under RCW 51.52.050 and 51.52.060. In the event such an order becomes  
10 final under chapter 51.52 RCW and notwithstanding the provisions of  
11 subsections (1) through (5) of this section, the director, director's  
12 designee, or self-insurer may file with the clerk in any county within  
13 the state a warrant in the amount of the sum representing the unpaid  
14 overpayment and/or penalty plus interest accruing from the date the  
15 order became final. The clerk of the county in which the warrant is  
16 filed shall immediately designate a superior court cause number for  
17 such warrant and the clerk shall cause to be entered in the judgment  
18 docket under the superior court cause number assigned to the warrant,  
19 the name of the worker, beneficiary, or other person mentioned in the  
20 warrant, the amount of the unpaid overpayment and/or penalty plus  
21 interest accrued, and the date the warrant was filed. The amount of  
22 the warrant as docketed shall become a lien upon the title to and  
23 interest in all real and personal property of the worker, beneficiary,  
24 or other person against whom the warrant is issued, the same as a  
25 judgment in a civil case docketed in the office of such clerk. The  
26 sheriff shall then proceed in the same manner and with like effect as  
27 prescribed by law with respect to execution or other process issued  
28 against rights or property upon judgment in the superior court. Such  
29 warrant so docketed shall be sufficient to support the issuance of  
30 writs of garnishment in favor of the department or self-insurer in the  
31 manner provided by law in the case of judgment, wholly or partially  
32 unsatisfied. The clerk of the court shall be entitled to a filing fee  
33 under RCW 36.18.012(10), which shall be added to the amount of the  
34 warrant. A copy of such warrant shall be mailed to the worker,  
35 beneficiary, or other person within three days of filing with the  
36 clerk.

37 The director, director's designee, or self-insurer may issue to any  
38 person, firm, corporation, municipal corporation, political subdivision

1 of the state, public corporation, or agency of the state, a notice to  
2 withhold and deliver property of any kind if there is reason to believe  
3 that there is in the possession of such person, firm, corporation,  
4 municipal corporation, political subdivision of the state, public  
5 corporation, or agency of the state, property that is due, owing, or  
6 belonging to any worker, beneficiary, or other person upon whom a  
7 warrant has been served for payments due the department or self-  
8 insurer. The notice and order to withhold and deliver shall be served  
9 by (~~certified mail~~) a method for which receipt can be confirmed or  
10 tracked accompanied by an affidavit of service by mailing or served by  
11 the sheriff of the county, or by the sheriff's deputy, or by any  
12 authorized representative of the director, director's designee, or  
13 self-insurer. Any person, firm, corporation, municipal corporation,  
14 political subdivision of the state, public corporation, or agency of  
15 the state upon whom service has been made shall answer the notice  
16 within twenty days exclusive of the day of service, under oath and in  
17 writing, and shall make true answers to the matters inquired or in the  
18 notice and order to withhold and deliver. In the event there is in the  
19 possession of the party named and served with such notice and order,  
20 any property that may be subject to the claim of the department or  
21 self-insurer, such property shall be delivered forthwith to the  
22 director, the director's authorized representative, or self-insurer  
23 upon demand. If the party served and named in the notice and order  
24 fails to answer the notice and order within the time prescribed in this  
25 section, the court may, after the time to answer such order has  
26 expired, render judgment by default against the party named in the  
27 notice for the full amount, plus costs, claimed by the director,  
28 director's designee, or self-insurer in the notice. In the event that  
29 a notice to withhold and deliver is served upon an employer and the  
30 property found to be subject thereto is wages, the employer may assert  
31 in the answer all exemptions provided for by chapter 6.27 RCW to which  
32 the wage earner may be entitled.

33 This subsection shall only apply to orders assessing an overpayment  
34 which are issued on or after July 28, 1991: PROVIDED, That this  
35 subsection shall apply retroactively to all orders assessing an  
36 overpayment resulting from fraud, civil or criminal.

37 (7) Orders assessing an overpayment which are issued on or after

1 July 28, 1991, shall include a conspicuous notice of the collection  
2 methods available to the department or self-insurer.

3 **Sec. 5.** RCW 51.48.120 and 1995 c 160 s 5 are each amended to read  
4 as follows:

5 If any employer should default in any payment due to the state fund  
6 the director or the director's designee may issue a notice of  
7 assessment certifying the amount due, which notice shall be served upon  
8 the employer by mailing such notice to the employer by (~~certified~~  
9 ~~mail~~) a method for which receipt can be confirmed or tracked to the  
10 employer's last known address or served in the manner prescribed for  
11 the service of a summons in a civil action. Such notice shall contain  
12 the information that an appeal must be filed with the board of  
13 industrial insurance appeals and the director by mail or personally  
14 within thirty days of the date of service of the notice of assessment  
15 in order to appeal the assessment unless a written request for  
16 reconsideration is filed with the department of labor and industries.

17 **Sec. 6.** RCW 51.48.150 and 1995 c 160 s 6 are each amended to read  
18 as follows:

19 The director or the director's designee is hereby authorized to  
20 issue to any person, firm, corporation, municipal corporation,  
21 political subdivision of the state, a public corporation, or any agency  
22 of the state, a notice and order to withhold and deliver property of  
23 any kind whatsoever when he or she has reason to believe that there is  
24 in the possession of such person, firm, corporation, municipal  
25 corporation, political subdivision of the state, public corporation, or  
26 any agency of the state, property which is or shall become due, owing,  
27 or belonging to any employer upon whom a notice of assessment has been  
28 served by the department for payments due to the state fund. The  
29 effect of a notice and order to withhold and deliver shall be  
30 continuous from the date such notice and order to withhold and deliver  
31 is first made until the liability out of which such notice and order to  
32 withhold and deliver arose is satisfied or becomes unenforceable  
33 because of lapse of time. The department shall release the notice and  
34 order to withhold and deliver when the liability out of which the  
35 notice and order to withhold and deliver arose is satisfied or becomes

1 unenforceable by reason of lapse of time and shall notify the person  
2 against whom the notice and order to withhold and deliver was made that  
3 such notice and order to withhold and deliver has been released.

4 The notice and order to withhold and deliver shall be served by the  
5 sheriff of the county or by the sheriff's deputy, by (~~certified mail,~~  
6 ~~return receipt requested~~) a method for which receipt can be confirmed  
7 or tracked, or by any duly authorized representatives of the director.  
8 Any person, firm, corporation, municipal corporation, political  
9 subdivision of the state, public corporation or any agency of the state  
10 upon whom service has been made is hereby required to answer the notice  
11 within twenty days exclusive of the day of service, under oath and in  
12 writing, and shall make true answers to the matters inquired of in the  
13 notice and order to withhold and deliver. In the event there is in the  
14 possession of the party named and served with a notice and order to  
15 withhold and deliver, any property which may be subject to the claim of  
16 the department, such property shall be delivered forthwith to the  
17 director or the director's duly authorized representative upon service  
18 of the notice to withhold and deliver which will be held in trust by  
19 the director for application on the employer's indebtedness to the  
20 department, or for return without interest, in accordance with a final  
21 determination of a petition for review, or in the alternative such  
22 party shall furnish a good and sufficient surety bond satisfactory to  
23 the director conditioned upon final determination of liability. Should  
24 any party served and named in the notice to withhold and deliver fail  
25 to make answer to such notice and order to withhold and deliver, within  
26 the time prescribed herein, it shall be lawful for the court, after the  
27 time to answer such order has expired, to render judgment by default  
28 against the party named in the notice to withhold and deliver for the  
29 full amount claimed by the director in the notice to withhold and  
30 deliver together with costs. In the event that a notice to withhold  
31 and deliver is served upon an employer and the property found to be  
32 subject thereto is wages, then the employer shall be entitled to assert  
33 in the answer to all exemptions provided for by chapter 6.27 RCW to  
34 which the wage earner may be entitled.

35 **Sec. 7.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read  
36 as follows:

37 (1) Whenever the department has made any order, decision, or award,

1 it shall promptly serve the worker, beneficiary, employer, or other  
2 person affected thereby, with a copy thereof by mail, (~~which shall be~~  
3 ~~addressed to such person at his or her last known address as shown by~~  
4 ~~the records of the department~~) or if the worker, beneficiary,  
5 employer, or other person affected thereby chooses, the department may  
6 send correspondence and other legal notices by secure electronic means  
7 except for orders communicating the closure of a claim. Persons who  
8 choose to receive correspondence and other legal notices electronically  
9 shall be provided information to assist them in ensuring all electronic  
10 documents and communications are received. Correspondence and notices  
11 must be addressed to such a person at his or her last known postal or  
12 electronic address as shown by the records of the department.  
13 Correspondence and notices sent electronically are considered received  
14 on the date sent by the department. The copy, in case the same is a  
15 final order, decision, or award, shall bear on the same side of the  
16 same page on which is found the amount of the award, a statement, set  
17 in black faced type of at least ten point body or size, that such final  
18 order, decision, or award shall become final within sixty days from the  
19 date the order is communicated to the parties unless a written request  
20 for reconsideration is filed with the department of labor and  
21 industries, Olympia, or an appeal is filed with the board of industrial  
22 insurance appeals, Olympia. However, a department order or decision  
23 making demand, whether with or without penalty, for repayment of sums  
24 paid to a provider of medical, dental, vocational, or other health  
25 services rendered to an industrially injured worker, shall state that  
26 such order or decision shall become final within twenty days from the  
27 date the order or decision is communicated to the parties unless a  
28 written request for reconsideration is filed with the department of  
29 labor and industries, Olympia, or an appeal is filed with the board of  
30 industrial insurance appeals, Olympia.

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

1 (b) An order by the department awarding benefits shall become  
2 effective and benefits due on the date issued. Subject to (b)(i) and  
3 (ii) of this subsection, if the department order is appealed the order  
4 shall not be stayed pending a final decision on the merits unless  
5 ordered by the board. Upon issuance of the order granting the appeal,  
6 the board will provide the worker with notice concerning the potential  
7 of an overpayment of benefits paid pending the outcome of the appeal  
8 and the requirements for interest on unpaid benefits pursuant to RCW  
9 51.52.135. A worker may request that benefits cease pending appeal at  
10 any time following the employer's motion for stay or the board's order  
11 granting appeal. The request must be submitted in writing to the  
12 employer, the board, and the department. Any employer may move for a  
13 stay of the order on appeal, in whole or in part. The motion must be  
14 filed within fifteen days of the order granting appeal. The board  
15 shall conduct an expedited review of the claim file provided by the  
16 department as it existed on the date of the department order. The  
17 board shall issue a final decision within twenty-five days of the  
18 filing of the motion for stay or the order granting appeal, whichever  
19 is later. The board's final decision may be appealed to superior court  
20 in accordance with RCW 51.52.110. The board shall grant a motion to  
21 stay if the moving party demonstrates that it is more likely than not  
22 to prevail on the facts as they existed at the time of the order on  
23 appeal. The board shall not consider the likelihood of recoupment of  
24 benefits as a basis to grant or deny a motion to stay. If a  
25 self-insured employer prevails on the merits, any benefits paid may be  
26 recouped pursuant to RCW 51.32.240.

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

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

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

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

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

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

**ESHB 1725** - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

**ADOPTED 04/05/2011**

15 On page 1, line 2 of the title, after "program;" strike the  
16 remainder of the title and insert "and amending RCW 51.04.030,  
17 51.04.082, 51.24.060, 51.32.240, 51.48.120, 51.48.150, and 51.52.050."

**--- END ---**