

1 6054.E AMH SPRE H5049.1

2 **ESB 6054 - H AMD 0296 FAILED 03/06/92**

3 By Representative Sprenkle

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5 On page 5, after line 13, insert the following:

6 "Sec. 5. RCW 51.36.110 and 1986 c 200 s 2 are each amended to read
7 as follows:

8 Health care providers have no vested right to treat workers of this
9 state covered under Title 51 RCW, and the department shall provide for
10 health care for these workers under such terms and conditions as are in
11 the best interests of the workers.

12 (1) Therefore, the director of the department of labor and
13 industries or the director's ((authorized representative)) designee
14 shall have the authority to:

15 ((+1)) (a) Conduct audits and investigations of providers of
16 medical, dental, vocational, and other health services furnished to
17 ((industrially injured)) workers covered under Title 51 RCW pursuant to
18 Title 51 RCW. In the conduct of such audits or investigations, the
19 director or the director's ((authorized representatives)) designee may
20 examine all records or bills for submission of payment, or portions
21 thereof, including patient records, for which services were rendered by
22 a ((health services)) provider and reimbursed by the department or
23 self-insurer, notwithstanding the provisions of any other statute which
24 may make or purport to make such records privileged or confidential:
25 PROVIDED, That no original patient records shall be removed from the
26 premises of the health services provider, and that the disclosure of
27 any records or information obtained under authority of this section by
28 the department of labor and industries is prohibited and constitutes a

1 violation of RCW 42.22.040, unless such disclosure is directly
2 connected to the official duties of the department: AND PROVIDED
3 FURTHER, That the disclosure of patient information as required under
4 this section shall not subject any physician or other health services
5 provider to any liability for breach of any confidential relationships
6 between the provider and the patient: AND PROVIDED FURTHER, That the
7 director or the director's (~~authorized representative~~) designee shall
8 destroy all copies of patient medical records in their possession upon
9 completion of the audit, investigation, or proceedings.

10 Determinations by the department following any audit or
11 investigation may be made without examination of the worker by a health
12 care provider.

13 All information obtained by the department pursuant to this section
14 shall be confidential and not subject to the disclosure requirements of
15 chapter 42.17 RCW. Nothing herein shall preclude the use of such
16 information by the department of labor and industries or its legal
17 representatives in any proceeding, including an appeal by a provider or
18 by a worker on issues involving a provider, before the board of
19 industrial insurance appeals or the courts of this state;

20 ~~((2))~~ (b) Deny or reduce payment or demand reimbursement or
21 recoupment, with or without a penalty, of sums inappropriately paid to
22 providers. Any amounts paid within the thirty-six calendar months
23 immediately preceding the date of the demand may be included in the
24 demand: PROVIDED, That whenever any payment to a provider has been
25 induced by fraud the department may terminate or suspend eligibility to
26 participate as a provider of services furnished to any or all workers
27 covered under Title 51 RCW pursuant to Title 51 RCW and the provisions
28 of RCW 51.32.240(4) shall apply;

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

4 ~~(3))~~ (d) Terminate or suspend eligibility to participate as a
5 provider of services furnished to (~~industrially injured~~) any or all
6 workers covered under Title 51 RCW pursuant to Title 51 RCW for
7 patterns of medically unnecessary or inappropriate health care
8 independent of any action or inaction by any other state agency, board,
9 or commission including, but not limited to, those disciplinary
10 authorities established in Title 18 RCW; and

11 (e) Adopt, promulgate, amend, and rescind administrative rules, in
12 accordance with the administrative procedure act, chapter 34.05 RCW, to
13 carry out the policies and purposes of this chapter.

14 (2) The provisions of this chapter shall apply to the provision of
15 health care on any claim without regard to the date of injury or
16 disease or the date the services were rendered.

17 (3) In no case shall a worker be responsible for the payment of any
18 sum, or part thereof, recouped or demanded from a provider under this
19 section.

20 (4) Whenever the department has taken any action pursuant to this
21 section resulting in the termination or suspension of eligibility to
22 treat an injured worker, the department shall assist the affected
23 worker in the selection of a new provider."

24 "Sec. 6. RCW 51.52.060 and 1986 c 200 s 11 are each amended to
25 read as follows:

26 Any worker, beneficiary, employer, health care provider or other
27 person aggrieved by an order, decision, or award of the department
28 must, before he or she appeals to the courts, file with the board and
29 the director, by mail or personally, within sixty days from the day on

1 which such copy of such order, decision, or award was communicated to
2 such person, a notice of appeal to the board: PROVIDED, That a health
3 services provider or other person aggrieved by a department order or
4 decision only making demand, whether with or without penalty, for
5 repayment of sums paid to a provider of medical, dental, vocational, or
6 other health services rendered to an industrially injured worker must,
7 before he or she appeals to the courts, file with the board and the
8 director, by mail or personally, within twenty days from the day on
9 which such copy of such order or decision was communicated to the
10 health services provider upon whom the department order or decision was
11 served, a notice of appeal to the board. Within ten days of the date
12 on which an appeal has been granted by the board, the board shall
13 notify the other interested parties thereto of the receipt thereof and
14 shall forward a copy of said notice of appeal to such other interested
15 parties. Within twenty days of the receipt of such notice of the
16 board, the worker or the employer may file with the board a cross-
17 appeal from the order of the department from which the original appeal
18 was taken: PROVIDED, That nothing contained in this section shall be
19 deemed to change, alter or modify the practice or procedure of the
20 department for the payment of awards pending appeal: AND PROVIDED,
21 That failure to file notice of appeal with both the board and the
22 department shall not be ground for denying the appeal if the notice of
23 appeal is filed with either the board or the department: AND PROVIDED,
24 That, if within the time limited for filing a notice of appeal to the
25 board from an order, decision, or award of the department, the
26 department shall direct the submission of further evidence or the
27 investigation of any further fact, the time for filing such notice of
28 appeal shall not commence to run until such person shall have been
29 advised in writing of the final decision of the department in the
30 matter: PROVIDED, FURTHER, That in the event the department shall

1 direct the submission of further evidence or the investigation of any
2 further fact, as above provided, the department shall render a final
3 order, decision, or award within ninety days from the date such further
4 submission of evidence or investigation of further fact is ordered
5 which time period may be extended by the department for good cause
6 stated in writing to all interested parties for an additional ninety
7 days: PROVIDED, FURTHER, That the department, either within the time
8 limited for appeal, or within thirty days after receiving a notice of
9 appeal, may modify, reverse or change any order, decision, or award, or
10 may hold any such order, decision, or award in abeyance for a period of
11 ninety days which time period may be extended by the department for
12 good cause stated in writing to all interested parties for an
13 additional ninety days pending further investigation in light of the
14 allegations of the notice of appeal, and the board shall thereupon deny
15 the appeal, without prejudice to the appellant's right to appeal from
16 any subsequent determinative order issued by the department: AND
17 PROVIDED FURTHER, That the board may not issue a stay of a department
18 order issued under RCW 51.36.110 unless the appealing party can
19 demonstrate by substantial evidence that it will prevail in a hearing
20 on the merits. A decision on the motion for a stay must be based on
21 written affidavits and documentary evidence, including the department's
22 file, as may be submitted by the parties. An industrial appeals judge
23 who hears or decides a motion for a stay may not, without consent of
24 the parties, participate in writing the proposed decision and order in
25 the appeal."

26 "NEW SECTION. Sec. 7. A new section is added to chapter 42.17 RCW
27 to read as follows:

1 The disclosure requirements of this chapter shall not apply to
2 records and information obtained by the department of labor and
3 industries through the audit activities authorized by RCW 51.36.110."

4 "NEW SECTION. **Sec. 8.** A new section is added to chapter 51.36 RCW
5 to read as follows:

6 When any determination made by the department that demands payment
7 of a penalty or repayment of any sums deemed owing under RCW 51.36.110
8 becomes final, the amount owing may be recovered by the department as
9 follows:

10 (1) Any and all amounts may be offset at any time against future
11 payments due the provider under any claim with the state fund or self-
12 insurer, as the case may be; and

13 (2) The department may collect those sums by commencement of a
14 civil action in the name of the state and paid into the medical aid
15 fund or reimbursed to the self-insurer, as the case may be; and

16 (3) The director or the director's designee may file with the clerk
17 of any county within the state a warrant in the amount of the sums
18 owing plus interest from the date the order became final. The clerk of
19 the county in which the warrant is filed shall immediately designate a
20 superior court cause number for such warrant and the clerk shall cause
21 to be entered in the judgment docket under the superior court cause
22 number assigned to the warrant, the name of the provider mentioned in
23 the warrant, the amount of the penalties and repayment owing plus
24 interest accrued, and the date when the warrant was filed. The amount
25 of the warrant as docketed shall become a lien upon the title to and
26 interest in all real and personal property of the provider against whom
27 the warrant is issued, the same as a judgment in a civil case docketed
28 in the office of the clerk. The sheriff shall then proceed in the same
29 manner and with like effect as prescribed by law with respect to

1 execution or other process issued against rights or property upon
2 judgments in the superior court. The warrant so docketed shall be
3 sufficient to support the issuance of writs of garnishment in favor of
4 the department in the manner provided by law in the case of judgment,
5 wholly or partially unsatisfied. The clerk of the court shall be
6 entitled to a filing fee of five dollars, which shall be added to the
7 amount of the warrant. A copy of the warrant shall be mailed to the
8 provider within three days of filing with the clerk; and

9 (4) The director or the director's designee may issue to any
10 person, firm, corporation, municipal corporation, political subdivision
11 of the state, public corporation, or agency of the state, a notice and
12 order to withhold and deliver property of any kind if there is reason
13 to believe that there is in the possession of the person, firm,
14 corporation, municipal corporation, political subdivision of the state,
15 public corporation, or agency of the state, property that is due or
16 owing or belonging to any provider upon whom a warrant has been served
17 by the department for payments due the department. The notice and
18 order to withhold and deliver shall be served by the sheriff of the
19 county or by the sheriff's deputy, or by any authorized representatives
20 of the director. Any person, firm, corporation, municipal corporation,
21 political subdivision of the state, public corporation, or agency of
22 the state upon whom service has been made shall answer the notice
23 within twenty days exclusive of the day of service, under oath and in
24 writing, and shall make true answers to the matters inquired of in the
25 notice and order to withhold and deliver. In the event there is in the
26 possession of the party named and served with the notice and order, any
27 property that may be subject to the claim of the department, such
28 property shall be delivered forthwith to the director or the director's
29 authorized representative upon demand. If the party served and named
30 in the notice and order fails to answer the notice and order within the

1 time prescribed in this section, the court may, after the time to
2 answer the order has expired, render judgment by default against the
3 party named in the notice for the full amount claimed by the director
4 in the notice together with costs; and

5 (5) In all cases of probate, insolvency, assignment for the
6 benefits of creditors, or bankruptcy, the claim of the state for the
7 payments due shall be a lien prior to all other liens or claims and on
8 a parity with prior tax and liens, and the mere existence of such cases
9 or conditions shall be sufficient to create such lien without any prior
10 or subsequent action by the state. All administrators, receivers, or
11 assignees for the benefit of creditors shall notify the department of
12 such administration, receivership, or assignment within thirty days
13 from date of their appointment and qualification.

14 The department must commence action pursuant to subsections (2)
15 through (4) of this section within one year of the date its order
16 becomes final."

17 Renumber the remaining sections consecutively and correct any
18 internal references accordingly.

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22 On page 1, beginning on line 1 of the title, after "18.25.025"
23 strike "and 18.25.006" and insert ", 18.25.006, 51.36.110, and
24 51.52.060"

25 On page 1, line 2 of the title, after "18.25 RCW;" insert "adding
26 a new section to chapter 42.17 RCW; adding a new section to chapter
27 51.36 RCW;"

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4 On page 5, beginning on line 14, strike all of section 5

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8 On page 1, line 2 of the title, after "18.25 RCW;" insert "and"

9 On page 1, line 3 of the title, after "section" strike "; and
10 declaring an emergency"

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4 On page 3, after line 27, insert the following:

5 "(6) A person licensed under this chapter may not engage in the
6 practice of medicine as defined in chapter 18.71 RCW."

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4 On page 1, line 1 of the title, after "RCW" strike "18.25.025" and
5 insert "18.25.005"