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ENGROSSED SUBSTITUTE SENATE BILL 6299

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State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Anderson, Moore, Murray and Bailey; by request of Department of Labor & Industries)

Read first time 02/11/92.

1 AN ACT Relating to health care and vocational services provided  
2 under industrial insurance; amending RCW 51.36.110 and 51.52.060;  
3 adding a new section to chapter 42.17 RCW; adding a new section to  
4 chapter 51.36 RCW; creating a new section; and declaring an emergency.

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

6 **Sec. 1.** RCW 51.36.110 and 1986 c 200 s 2 are each amended to read  
7 as follows:

8 The integrity of the industrial insurance program of this state  
9 depends in large part upon provision of quality health care to workers  
10 covered under Title 51 RCW, and the provision of such services is of  
11 paramount importance. Medically unnecessary or inappropriate health  
12 care delays the healing process, and has grave potential for further  
13 injury to workers.

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

5 (1) Therefore, the director of the department of labor and  
6 industries or the director's ((authorized representative)) designee  
7 shall have the authority to:

8 ((1)) (a) Conduct audits and investigations of providers of  
9 medical, dental, vocational, and other health services furnished to  
10 ((industrially injured)) workers covered under Title 51 RCW pursuant to  
11 Title 51 RCW. In the conduct of such audits or investigations, the  
12 director or the director's ((authorized representatives)) designee may  
13 examine all records or bills for submission of payment, or portions  
14 thereof, including patient records, for which services were rendered by  
15 a ((health services)) provider and reimbursed by the department or  
16 self-insurer, notwithstanding the provisions of any other statute which  
17 may make or purport to make such records privileged or confidential:  
18 PROVIDED, That no original patient records shall be removed from the  
19 premises of the health services provider, and that the disclosure of  
20 any records or information obtained under authority of this section by  
21 the department of labor and industries is prohibited and constitutes a  
22 violation of RCW 42.22.040, unless such disclosure is directly  
23 connected to the official duties of the department: AND PROVIDED  
24 FURTHER, That the disclosure of patient information as required under  
25 this section shall not subject any physician or other health services  
26 provider to any liability for breach of any confidential relationships  
27 between the provider and the patient: AND PROVIDED FURTHER, That the  
28 director or the director's ((authorized representative)) designee shall  
29 destroy all copies of patient medical records in their possession upon  
30 completion of the audit, investigation, or proceedings.

1 Determinations by the department following any audit or  
2 investigation may be made without examination of the worker by a health  
3 care provider.

4 All information obtained by the department pursuant to this section  
5 shall be confidential and not subject to the disclosure requirements of  
6 chapter 42.17 RCW. Nothing herein shall preclude the use of such  
7 information by the department of labor and industries or its legal  
8 representatives in any proceeding, including an appeal by a provider or  
9 by a worker on issues involving a provider, before the board of  
10 industrial insurance appeals or the courts of this state;

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

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

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

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

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

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

10 (4) Whenever the department has taken any action pursuant to this  
11 section resulting in the termination or suspension of eligibility to  
12 treat an injured worker, the department shall assist the affected  
13 worker in the selection of a new provider.

14 **Sec. 2.** RCW 51.52.060 and 1986 c 200 s 11 are each amended to read  
15 as follows:

16 Any worker, beneficiary, employer, health care provider or other  
17 person aggrieved by an order, decision, or award of the department  
18 must, before he or she appeals to the courts, file with the board and  
19 the director, by mail or personally, within sixty days from the day on  
20 which such copy of such order, decision, or award was communicated to  
21 such person, a notice of appeal to the board: PROVIDED, That a health  
22 services provider or other person aggrieved by a department order or  
23 decision only making demand, whether with or without penalty, for  
24 repayment of sums paid to a provider of medical, dental, vocational, or  
25 other health services rendered to an industrially injured worker must,  
26 before he or she appeals to the courts, file with the board and the  
27 director, by mail or personally, within twenty days from the day on  
28 which such copy of such order or decision was communicated to the  
29 health services provider upon whom the department order or decision was

1 served, a notice of appeal to the board. Within ten days of the date  
2 on which an appeal has been granted by the board, the board shall  
3 notify the other interested parties thereto of the receipt thereof and  
4 shall forward a copy of said notice of appeal to such other interested  
5 parties. Within twenty days of the receipt of such notice of the  
6 board, the worker or the employer may file with the board a cross-  
7 appeal from the order of the department from which the original appeal  
8 was taken: PROVIDED, That nothing contained in this section shall be  
9 deemed to change, alter or modify the practice or procedure of the  
10 department for the payment of awards pending appeal: AND PROVIDED,  
11 That failure to file notice of appeal with both the board and the  
12 department shall not be ground for denying the appeal if the notice of  
13 appeal is filed with either the board or the department: AND PROVIDED,  
14 That, if within the time limited for filing a notice of appeal to the  
15 board from an order, decision, or award of the department, the  
16 department shall direct the submission of further evidence or the  
17 investigation of any further fact, the time for filing such notice of  
18 appeal shall not commence to run until such person shall have been  
19 advised in writing of the final decision of the department in the  
20 matter: PROVIDED, FURTHER, That in the event the department shall  
21 direct the submission of further evidence or the investigation of any  
22 further fact, as above provided, the department shall render a final  
23 order, decision, or award within ninety days from the date such further  
24 submission of evidence or investigation of further fact is ordered  
25 which time period may be extended by the department for good cause  
26 stated in writing to all interested parties for an additional ninety  
27 days: PROVIDED, FURTHER, That the department, either within the time  
28 limited for appeal, or within thirty days after receiving a notice of  
29 appeal, may modify, reverse or change any order, decision, or award, or  
30 may hold any such order, decision, or award in abeyance for a period of

1 ninety days which time period may be extended by the department for  
2 good cause stated in writing to all interested parties for an  
3 additional ninety days pending further investigation in light of the  
4 allegations of the notice of appeal, and the board shall thereupon deny  
5 the appeal, without prejudice to the appellant's right to appeal from  
6 any subsequent determinative order issued by the department: AND  
7 PROVIDED FURTHER, That the board may not issue a stay of a department  
8 order issued under RCW 51.36.110 unless the appealing party can  
9 demonstrate by substantial evidence that it will prevail in a hearing  
10 on the merits. A decision on the motion for a stay must be based on  
11 written affidavits and documentary evidence, including the department's  
12 file, as may be submitted by the parties. An industrial appeals judge  
13 who hears or decides a motion for a stay may not, without consent of  
14 the parties, participate in writing the proposed decision and order in  
15 the appeal.

16 NEW SECTION. Sec. 3. A new section is added to chapter 42.17 RCW  
17 to read as follows:

18 The disclosure requirements of this chapter shall not apply to  
19 records and information obtained by the department of labor and  
20 industries through the audit activities authorized by RCW 51.36.110.

21 NEW SECTION. Sec. 4. A new section is added to chapter 51.36 RCW  
22 to read as follows:

23 When any determination made by the department that demands payment  
24 of a penalty or repayment of any sums deemed owing under RCW 51.36.110  
25 becomes final, the amount owing may be recovered by the department as  
26 follows:

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

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

7 (3) The director or the director's designee may file with the clerk  
8 of any county within the state a warrant in the amount of the sums  
9 owing plus interest from the date the order became final. The clerk of  
10 the county in which the warrant is filed shall immediately designate a  
11 superior court cause number for such warrant and the clerk shall cause  
12 to be entered in the judgment docket under the superior court cause  
13 number assigned to the warrant, the name of the provider mentioned in  
14 the warrant, the amount of the penalties and repayment owing plus  
15 interest accrued, and the date when the warrant was filed. The amount  
16 of the warrant as docketed shall become a lien upon the title to and  
17 interest in all real and personal property of the provider against whom  
18 the warrant is issued, the same as a judgment in a civil case docketed  
19 in the office of the clerk. The sheriff shall then proceed in the same  
20 manner and with like effect as prescribed by law with respect to  
21 execution or other process issued against rights or property upon  
22 judgments in the superior court. The warrant so docketed shall be  
23 sufficient to support the issuance of writs of garnishment in favor of  
24 the department in the manner provided by law in the case of judgment,  
25 wholly or partially unsatisfied. The clerk of the court shall be  
26 entitled to a filing fee of five dollars, which shall be added to the  
27 amount of the warrant. A copy of the warrant shall be mailed to the  
28 provider within three days of filing with the clerk; and

29 (4) The director or the director's designee may issue to any  
30 person, firm, corporation, municipal corporation, political subdivision

1 of the state, public corporation, or agency of the state, a notice and  
2 order to withhold and deliver property of any kind if there is reason  
3 to believe that there is in the possession of the person, firm,  
4 corporation, municipal corporation, political subdivision of the state,  
5 public corporation, or agency of the state, property that is due or  
6 owing or belonging to any provider upon whom a warrant has been served  
7 by the department for payments due the department. The notice and  
8 order to withhold and deliver shall be served by the sheriff of the  
9 county or by the sheriff's deputy, or by any authorized representatives  
10 of the director. Any person, firm, corporation, municipal corporation,  
11 political subdivision of the state, public corporation, or agency of  
12 the state upon whom service has been made shall answer the notice  
13 within twenty days exclusive of the day of service, under oath and in  
14 writing, and shall make true answers to the matters inquired of in the  
15 notice and order to withhold and deliver. In the event there is in the  
16 possession of the party named and served with the notice and order, any  
17 property that may be subject to the claim of the department, such  
18 property shall be delivered forthwith to the director or the director's  
19 authorized representative upon demand. If the party served and named  
20 in the notice and order fails to answer the notice and order within the  
21 time prescribed in this section, the court may, after the time to  
22 answer the order has expired, render judgment by default against the  
23 party named in the notice for the full amount claimed by the director  
24 in the notice together with costs; and

25 (5) In all cases of probate, insolvency, assignment for the  
26 benefits of creditors, or bankruptcy, the claim of the state for the  
27 payments due shall be a lien prior to all other liens or claims and on  
28 a parity with prior tax and liens, and the mere existence of such cases  
29 or conditions shall be sufficient to create such lien without any prior  
30 or subsequent action by the state. All administrators, receivers, or



1 assignees for the benefit of creditors shall notify the department of  
2 such administration, receivership, or assignment within thirty days  
3 from date of their appointment and qualification.

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

7 NEW SECTION. **Sec. 5.** If specific funding for the purposes of  
8 this act, referencing this act by bill number, is not provided by June  
9 30, 1992, in the omnibus appropriations act, this act shall be null and  
10 void.

11 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of the  
13 state government and its existing public institutions, and shall take  
14 effect immediately.