

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2843

Chapter 29, Laws of 1994

53rd Legislature
1994 Regular Session

WORKERS' COMPENSATION--PILOT PROJECTS TO REDUCE
LONG-TERM DISABILITY RATE

EFFECTIVE DATE: 6/9/94

Passed by the House February 10, 1994
Yeas 95 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate March 1, 1994
Yeas 49 Nays 0

JOEL PRITCHARD
President of the Senate

Approved March 21, 1994

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2843** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER
Chief Clerk

FILED

March 21, 1994 - 11:31 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 2843

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Representatives G. Cole, Long, Heavey, Roland, Cothorn, Jones, Caver, Valle, Flemming, Wolfe, L. Johnson, Shin, Lemmon, Conway, Springer, Karahalios, J. Kohl, Kessler, Orr and King; by request of Department of Labor & Industries

Read first time 01/26/94. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to conducting systematic pilot projects by the
2 department of labor and industries to reduce the rate of long-term
3 disability within the workers' compensation system; adding a new
4 chapter to Title 51 RCW; creating a new section; and providing an
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that the
8 financial costs of long-term disability represent a significant amount
9 of lost productivity for the state's economy and tax base, and result
10 in a lower standard of living for many citizens. Further, the
11 uncompensated human costs of long-term disability affect tens of
12 thousands of injured workers and their families and include loss of
13 self-esteem, lower standards of living, dreams denied, divorce, and, in
14 some severe cases, death.

15 The legislature also finds that long-term disability is a rapidly
16 growing problem and that the most successful strategies for preventing
17 long-term disability and returning injured workers to work emphasize
18 active employer and employee organization involvement, improved medical

1 treatment and decision making, and better coordination and management
2 of cases that are at high risk of long-term disability.

3 Therefore, it is the intent of the legislature that the department
4 conduct two pilot projects to reduce the rate of long-term disability
5 and initiate a cultural shift from disability management to disability
6 prevention. These pilot projects are intended to test the viability of
7 new ideas and approaches for system-wide implementation and are also
8 intended to be developed in consultation with the workers' compensation
9 advisory committee to allow for some flexibility in design and intent.
10 Both pilot projects are intended to shift resources to the early
11 portions of the most difficult claims in an attempt to prevent the
12 system failures that contribute to long-term disability.

13 NEW SECTION. **Sec. 2.** FIRST PILOT PROJECT. The first pilot
14 project must include the following elements:

15 (1) Preinjury outreach and planning must be used to prevent
16 disabling injuries, to provide appropriate transitional work and
17 reemployment opportunities for those workers who are injured, and to
18 enhance the abilities of employers and providers to prevent long-term
19 disability. Provider education and outreach must encourage and enable
20 attending providers to more adequately and completely fulfill their
21 responsibilities as currently defined.

22 (2) Lower claims loads must be combined with return-to-work and on-
23 the-job training projects for more intensive claims management, as
24 provided in this subsection:

25 (a) A team approach must be used to begin working with claimants at
26 risk of long-term disability as soon as possible after the injury
27 occurs. This project must include the following elements: Lower
28 claims loads for claims managers; intensive screening of claims; and
29 intensive claims management for injured workers at high risk of long-
30 term disability.

31 (b) In cases in which injured workers would otherwise qualify for
32 vocational rehabilitation services, assistance in on-the-job training
33 for alternative work may be provided earlier in the life of the claim.
34 To subsidize the cost of on-the-job training with the employer, the
35 department may use for a specified contract funds that would otherwise
36 have been used to develop and implement a traditional vocational
37 rehabilitation plan. These on-the-job training contracts must be
38 evaluated for possible expanded eligibility at the earliest time

1 feasible. An injured worker who participates in an on-the-job training
2 program under this subsection and utilizes funds that would otherwise
3 be used to develop and implement a traditional vocational
4 rehabilitation plan is not eligible at a later time in the life of the
5 claim for traditional vocational rehabilitation services.

6 (c) Every effort must be made to move beyond the finding of
7 medically fixed and stable and employable as the basis for closing
8 claims, and instead work to achieve a circumstance of employment that
9 is mutually beneficial to all parties. If this is not possible,
10 and:

11 (i) If the worker is found to be medically fixed and stable with no
12 work restrictions, then the claim must be closed with either return to
13 work or a seamless transition, coordinated by the claims manager, to
14 other forms of assistance that might be available, including the basic
15 health plan, unemployment insurance benefits, and job services; or

16 (ii) If the worker is found to be medically fixed and stable with
17 restrictions, then the claims manager shall work with the employer to
18 use job modification and on-the-job training to enable the worker to be
19 reemployed, either with the original employer or a new employer.

20 NEW SECTION. **Sec. 3.** SECOND PILOT PROJECT. The second pilot
21 project must incorporate all of the elements of the first pilot under
22 section 2 of this act and also must provide case managers for injured
23 workers at high risk of long-term disability and reconfigure portions
24 of the current independent medical examination system. In addition to
25 the elements of the first pilot, the second pilot must include the
26 following elements:

27 (1) Case managers must be used to coordinate a team approach in
28 working with claimants at risk of long-term disability as soon as
29 possible after the injury occurs. It is preferred that case managers
30 be employees of the department.

31 (2) An intermediate screening of all compensable claims must be
32 used to evaluate their need for intensive services, including the
33 provision of case management.

34 (3)(a) A medical progress examination, separate from an impairment
35 rating examination, must be used to determine whether a change in
36 diagnosis or treatment is in order. For a claim at six months of time-
37 loss payments or earlier, if there is no clear progress toward return
38 to work or medical progress the claims manager shall request that a

1 medical progress examination be conducted by a physician other than the
2 attending physician. The purpose of the medical progress examination
3 is to determine whether the injured worker's medical condition is
4 making appropriate progress, is fixed and stable, or, if neither, to
5 recommend appropriate changes in either diagnosis or treatment, or
6 both.

7 (b)(i) The claims manager shall request the medical progress exam,
8 in consultation with the employer, by selecting an examiner from a pool
9 of qualified examiners, with concurrence by both the injured worker and
10 the employer, or the worker or employer's representative. If agreement
11 among the parties cannot be reached after consideration of three
12 proposed examiners, the claims manager shall select the examiner.

13 (ii) The pool of qualified examiners must be established using new
14 criteria and standards to be developed by the department and endorsed
15 by the workers' compensation advisory committee, with input from other
16 interested parties, before taking effect.

17 (c) If the examination finds the claimant's medical condition to be
18 fixed and stable, including if appropriate an evaluation of the
19 claimant's physical conditioning and rehabilitation needs, the case
20 must be referred back to the attending provider for review and comment,
21 and an impairment rating if the attending physician concurs with the
22 findings of the medical progress examination.

23 (d) The attending provider is encouraged to take a more active role
24 in dispute prevention, so consequently all medical progress reports
25 must be reviewed by the attending provider in consultation with the
26 injured worker. As part of this review, the attending provider shall
27 state in writing why the attending provider agrees or disagrees with
28 the examiner's findings and recommendations. The attending provider
29 must receive reasonable reimbursement for this review.

30 (4)(a) The attending physician must be encouraged to either conduct
31 or participate, or both, in the permanent impairment rating exam to
32 prevent disputes and achieve more timely and impartial decisions.

33 (b) If the attending physician performs the examination, special
34 resources must be available to assist the attending physician if
35 necessary.

36 (c) If the attending physician chooses not to be involved in
37 performing the rating examination, the injured worker must be informed
38 of this choice and may choose one of the following options:

1 (i) The examination will be performed by a physician agreed to
2 under the current procedures for agreed exams; or

3 (ii) The injured worker and the employer agree upon an examiner
4 from a pool of qualified rating examiners to recommend a rating to the
5 claims manager. The pool of qualified rating examiners must be
6 established on new criteria and standards to be developed by the
7 department and endorsed by the workers' compensation advisory
8 committee, with input from other interested parties, before taking
9 effect.

10 (d) If the exam is conducted by a qualified rating examiner, the
11 rating physician shall recommend a rating, sending it to the claim
12 manager and the attending provider, with whom the injured worker is
13 urged to meet to discuss the recommended rating. At this point, the
14 attending provider may either agree to the rating of the qualified
15 rating examiner in writing or disagree with the rating in writing,
16 including any suggestions for changes in the rating. The attending
17 provider must receive a reasonable reimbursement for this review.

18 (e) If the injured worker disagrees with the attending physician's
19 rating, the injured worker may arrange for an agreed examination under
20 the procedures under this subsection.

21 (f) If the employer disagrees with the attending physician's
22 rating, the employer may choose either:

23 (i) An agreed-upon examination under the procedures under this
24 subsection; or

25 (ii) The employer may select a rating examiner from the pool of
26 qualified rating examiners. If the rating recommendation from this
27 examination conflicts with that from the attending physician rating
28 examination, the claims manager shall select one or the other of the
29 ratings but may not split the difference between the ratings.

30 (5) The closure of claims must be handled with greater sensitivity
31 to the anxiety this action might present for the injured worker,
32 including improved closure notification and medical transition
33 procedures.

34 NEW SECTION. **Sec. 4.** EVALUATION. The department shall evaluate
35 both pilot projects established under sections 2 and 3 of this act on
36 the objective, observable results of the services provided. Outcome
37 measures must include:

1 (1) A principle measure for the pilots must be the amount of
2 reduction, if any, in the rate of long-term disability among state fund
3 claimants;

4 (2) The measure of increases, if any, in the rate of appropriate
5 return to work before full medical stability, and any increase in the
6 rate of return to work following claim closure;

7 (3) The measure of the economic advantages to the employer, if any,
8 of taking a more active role in work safety, return-to-work planning,
9 and disability prevention. The cost of claims and the effects of the
10 pilots on employer premium rates must be measured;

11 (4) The measure of improvements, if any, in the level of customer
12 satisfaction and any reduction in the rate of disputes and appeals;

13 (5) The measure of improvements, if any, in the efficient
14 functioning and outcomes of the redesigned claims units;

15 (6) The duration of follow-up data must be sufficient to provide
16 the desired measurements. Measures of services, characteristics, and
17 outcomes must be gathered for individual injured workers and employers
18 in these pilots and a comparative sample of injured workers and
19 employers not included in the pilots, and collected for comparison and
20 evaluation in a common format; and

21 (7) Further research must be conducted by the department into the
22 identification of persons who are at high risk of long-term disability
23 in the workers' compensation system.

24 NEW SECTION. **Sec. 5.** REPORTS. The department shall make annual
25 reports to the legislature on the progress and outcomes of the pilot
26 projects specified in sections 2 and 3 of this act beginning on
27 December 1, 1994, and semiannual reports to the workers' compensation
28 advisory committee, beginning with the committee's meeting in the
29 second quarter of 1994.

30 NEW SECTION. **Sec. 6.** CAPTIONS. Captions as used in this act do
31 not constitute any part of the law.

32 NEW SECTION. **Sec. 7.** CODIFICATION. Sections 1 through 5 of this
33 act shall constitute a new chapter in Title 51 RCW.

34 NEW SECTION. **Sec. 8.** EXPIRATION. This act shall expire June 30,
35 1999.

Passed the House February 10, 1994.

Passed the Senate March 1, 1994.

Approved by the Governor March 21, 1994.

Filed in Office of Secretary of State March 21, 1994.