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3 By Senators Heavey, Prentice and Pelz

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.16 RCW  
8 to read as follows:

9 (1) The department shall offer a retrospective rating plan to  
10 qualified employers and groups of employers. The plan shall be  
11 available on a voluntary basis for the period of one coverage period  
12 and may be renewed at the end of the year. The retrospective rating  
13 plan shall be consistent with recognized insurance principles and shall  
14 be administered according to rules, schedules, and factors adopted by  
15 the department. Rules adopted under this section should encourage the  
16 broadest possible participation by employers and groups consistent with  
17 insurance principles. The director is authorized to establish and  
18 adopt all necessary rules governing the administration of this section.

19 (2) In addition to those general powers and rights deemed  
20 appropriate by the department, retrospective rating plan employers and  
21 groups who administer their plans with an authorized claims  
22 administrator shall have the authority to assist the department in the  
23 processing of claims with the date of injury on or after January 1,  
24 1997. The authority shall include implementation of administrative  
25 functions that are necessary to the timely management of a claim. The  
26 department shall adopt rules detailing such authority, which shall be  
27 comprehensive and include, but not be limited to, the following:

28 (a) Authorization to schedule medical examinations and  
29 consultations, using only qualified persons from a rotating list  
30 supplied by the department.

31 (b) Authorization to initiate any rehabilitation services and  
32 select vocational rehabilitation providers from the department's  
33 contracted provider list or use department providers. The three  
34 thousand dollar expenditure limitation in any fifty-two week period  
35 established in RCW 51.32.095 shall not apply to the provision of  
36 vocational rehabilitation approved by a retrospective rating plan

1 employer or group, and the supervisor of industrial insurance may at  
2 any time, in the supervisor's sole discretion, authorize the  
3 expenditure of a sum not to exceed six thousand dollars in any fifty-  
4 two week period for the costs of vocational rehabilitation. Up to  
5 fifty-two additional weeks and up to six thousand additional dollars  
6 may be authorized by the supervisor for vocational rehabilitation  
7 approved by a retrospective rating plan employer or group. If  
8 consistent with the discretion of the supervisor and department rules  
9 regarding vocational rehabilitation services, when both the employer or  
10 group and the worker sign an agreement for vocational rehabilitation  
11 services, the agreement is deemed approved. Vocational rehabilitation  
12 services may include job placement services, skill enhancement  
13 services, vocational rehabilitation plans, or other accepted services.

14 (3)(a) Retrospective rating plan employers and groups who  
15 administer their plans with an authorized claims administrator shall  
16 have the authority to close claims as authorized in this subsection.  
17 If a claim with the date of injury on or after January 1, 1997, (i)  
18 involves only medical treatment and/or the payment of temporary  
19 disability compensation under RCW 51.32.090 for a period of thirty days  
20 or less, (ii) at the time medical treatment is concluded, does not  
21 involve permanent disability, (iii) is one with respect to which the  
22 department has not intervened under subsection (4) of this section, and  
23 (iv) the injured worker has returned to work with the retrospective  
24 rating plan employer or group at the worker's previous job or at a job  
25 that has comparable wages and benefits, the claim may be closed by the  
26 retrospective rating plan employer or group, subject to reporting of  
27 claims to the department in a manner prescribed by the department rules  
28 adopted under chapter 34.05 RCW.

29 (b) Upon closure of a claim under this subsection, the  
30 retrospective rating plan employer or group shall enter a written  
31 order, communicated to the worker, the attending physician, and the  
32 department, which contains the following statement clearly set forth in  
33 bold face type: "This order constitutes notification that your claim  
34 is being closed with medical benefits and temporary disability  
35 compensation only as provided, and with the condition you have returned  
36 to work. If for any reason you disagree with the conditions or  
37 duration of your return to work or the medical benefits or the  
38 temporary disability compensation that has been provided, you may  
39 protest in writing to the department of labor and industries within

1 sixty days of the date you received this order." If the department  
2 receives such a protest, the closure order shall be held in abeyance.  
3 The department shall review the claim closure action and enter a  
4 determinative order within thirty days of receipt of the protest, as  
5 provided for in RCW 51.52.050.

6 (c) If a worker protests closure of a claim involving medical  
7 treatment, any medical benefits being received by the worker prior to  
8 closure shall continue until the department closes the claim.

9 (d) If within two years of claim closure the department determines  
10 that a violation of the conditions of claim closure have occurred, the  
11 department may correct the benefits paid or payable. This subsection  
12 does not limit in any way the application of RCW 51.32.240.

13 (e) Retrospective rating plan employers and groups have a duty of  
14 good faith and fair dealing to their employees. No retrospective  
15 rating plan employer or group may (i) encourage the nonreporting of a  
16 workplace accident or the nonfiling of a workers' compensation claim;  
17 or (ii) interfere in any way with the reporting of an accident or the  
18 filing of a claim. Any employer or group that violates the prohibition  
19 of this subsection (3)(e) shall not be eligible to participate in a  
20 retrospective rating plan for five years from the quarter in which the  
21 employer or group engaged in the prohibited activity. If a  
22 retrospective rating plan employer or group unreasonably delays or  
23 refuses to pay benefits as they become due there shall be paid by the  
24 employer or group upon order of the director an additional amount equal  
25 to five hundred dollars or twenty-five percent of the amount then due,  
26 whichever is greater, which shall accrue for the benefit of the  
27 claimant and shall be paid to the claimant with the benefits which may  
28 be assessed under this title. The director shall issue an order  
29 determining whether there was an unreasonable delay or refusal to pay  
30 benefits within thirty days upon the request of the claimant. Such an  
31 order shall conform to the requirements of RCW 51.52.050.

32 (4) If a dispute arises from the handling of any claim under this  
33 section before the condition of the injured worker becomes fixed, the  
34 department shall intervene to resolve any dispute.

35 (5) Exercise of any authority authorized by this section may  
36 require prior notification to the department, but rules adopted under  
37 this section shall minimize the department's need to respond and ensure  
38 that a failure to respond or delay in response by the department does  
39 not impede the timely administration of the claim. A retrospective

1 rating plan employer or group may exceed department medical fee or  
2 other fee schedules but shall be required to pay any difference.

3 (6) The department shall conduct a study of all retrospective  
4 rating plan employers or groups who exercise the authority authorized  
5 under subsections (2) and (3) of this section and report to the  
6 legislature by December 1, 1999. The study plan shall be approved by  
7 the workers' compensation advisory committee and shall include, but not  
8 be limited to, examination of injured worker vocational outcomes,  
9 worker complaints, litigation rates, and employer claims management  
10 problems with the department. The study shall also include a review of  
11 return-to-work and long-term wage replacement outcomes for workers of  
12 the employers in the study compared with workers of state fund  
13 employers in similar risk classifications.

14 (7) For purposes of this section, "authorized claims administrator"  
15 means a person who meets department qualifications as defined by rules  
16 adopted by the department. The department shall also establish by rule  
17 procedures for approval and disapproval of authorized claims  
18 administrators.

19 (8) If the outcome of the study under subsection (6) of this  
20 section demonstrates that retrospective rating plan employers or groups  
21 who exercise the authority authorized under subsections (2) and (3) of  
22 this section are not achieving better overall injured worker outcomes  
23 than their state fund counterparts, this section shall expire on July  
24 1, 2000.

25 **Sec. 2.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read  
26 as follows:

27 (1) Every employer who is not a self-insurer shall deduct from the  
28 pay of each of his or her workers one-half of the amount he or she is  
29 required to pay, for medical benefits within each risk classification.  
30 Such amount shall be periodically determined by the director and  
31 reported by him or her to all employers under this title: PROVIDED,  
32 That the state governmental unit shall pay the entire amount into the  
33 medical aid fund for volunteers, as defined in RCW 51.12.035, and the  
34 state apprenticeship council shall pay the entire amount into the  
35 medical aid fund for registered apprentices or trainees, for the  
36 purposes of RCW 51.12.130. For employers eligible to participate in  
37 the department's retrospective rating program authorized by section 1  
38 of this act, the amount deducted from a worker's pay under this section

1 shall not exceed one-half of the base rate within each risk  
2 classification that the worker reports. The deduction under this  
3 section is not authorized for premiums assessed under RCW 51.16.210.

4 (2) It shall be unlawful for the employer, unless specifically  
5 authorized by this title, to deduct or obtain any part of the premium  
6 or other costs required to be by him or her paid from the wages or  
7 earnings of any of his or her workers, and the making of or attempt to  
8 make any such deduction shall be a gross misdemeanor."

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12 On page 1, line 2 of the title, after "plans;" strike the remainder  
13 of the title and insert "amending RCW 51.16.140; adding a new section  
14 to chapter 51.16 RCW; and providing a contingent expiration date."

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