

# HOUSE BILL REPORT

## HB 1725

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**As Reported by House Committee On:**  
Labor & Workforce Development

**Title:** An act relating to administrative efficiencies for the workers' compensation program.

**Brief Description:** Addressing administrative efficiencies for the workers' compensation program.

**Sponsors:** Representatives Sells, Reykdal, Ormsby, Kenney and Upthegrove; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:**

Labor & Workforce Development: 2/4/11, 2/16/11 [DPS].

**Brief Summary of Substitute Bill**

- Requires self-insured employers to issue orders when allowing or reopening a claim, and permits self-insured employers to make wage determinations.
- Allows the Department of Labor and Industries to send notices electronically when requested by the worker, employer, or other person affected.
- Makes other changes regarding the administration of workers' compensation.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Green, Kenney, Miloscia, Moeller, Ormsby, Roberts, Taylor and Warnick.

**Staff:** Joan Elgee (786-7106).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Department of Labor and Industries (Department) administers the workers' compensation program. Employers must either insure through the State Fund, or may self-insure if qualified.

Self-insurers may manage some aspects of their injured workers claims; for example, a self-insurer may close some claims that involve only medical treatment or medical treatment and permanent partial disability. When the self-insurer closes a claim, the self-insurer issues an appealable order.

The Department issues various notices under the workers' compensation program. Some of these notices must be sent by registered or certified mail.

The Director of the Department establishes a fee schedule of the maximum charges to be made by a medical provider. The fee schedule is not a "rule" under the Administrative Procedure Act.

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### **Summary of Substitute Bill:**

Self-insurers must take affirmative action with respect to the allowance and reopening of a claim. If a self-insurer:

- decides to allow a claim, the self-insurer must issue an order within 60 days from the date of notice of a claim; if an allowance order is not issued within 60 days, the claim is allowed;
- determines that a claim should be denied, the self-insurer must request denial within 60 days of the date of notice of a claim; if denial is not requested within 60 days, the claim is allowed;
- decides to reopen a claim, the self-insurer must issue an order within 90 days of the worker's request for reopening or the application is granted; this authority applies to reopening applications made within seven years of the first closing order; and
- determines that a reopening should be denied, the self-insurer must request denial within 70 days from the reopening application. The Department has 20 days to review the request. If the denial order is not issued, the reopening application is deemed granted.

The various times for issuing orders may be extended by the self-insurer for an additional 60 days for good cause.

A self-insurer may also issue an order establishing a worker's monthly wage.

The Department must establish forms for self-insurer orders. Protests to orders issued by self-insurers must be reviewed by the Department. If no protest is timely filed, an order issued by a self-insurer becomes final. The Department may intervene in an open claim to resolve a dispute. Self-insured employers who do not issue timely orders are subject to penalties payable to the worker, and the Department may establish penalty amounts in rule.

Industrial insurance notices and orders may be sent electronically if requested by the employer, worker, beneficiary, or other person affected. Correspondence and notices sent electronically are considered received on the date sent. Orders and notices required to be served by registered or certified mail may be served by any method for which receipt can be confirmed or tracked.

The billing or payment instructions and policies associated with a fee schedule do not constitute a "rule" under the Administrative Procedure Act.

**Substitute Bill Compared to Original Bill:**

The substitute bill restores current law stating that employers shall deduct one-half the Medical Aid and Supplemental Pension Fund premiums from worker payrolls.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a request bill to clarify, modernize, and provide some cost-effective alternatives. Medical providers in particular have asked to receive electronic notices. Electronic notice is an option, not a requirement. Using a method other than certified mail is cost effective. Regarding self-insurers, the allowance decisions are just a rubber stamp. For wage determinations, the Department will create a form so workers would understand. Requiring the self-insurer's to do these will allow the Department to focus on making sure the workers' compensation laws are being followed. The billing instructions are part of the fee schedule. Regarding the proposed substitute bill, making the deduction of premiums from workers' pay optional would have caused problems in some industries.

(In support with concerns) The bill does a good job of simplifying administration but it's unclear how the changes mesh with current self-insured employer authority. Self-insurers should have a duty of good faith, with penalties. They are not disinterested parties. Allowance claims should only allow or reopen the claim and not be a backdoor method for doing other things. Subsection (5) is not clear. Sixty days is too long for an extension. Wage orders are complicated and allowing self-insured employers to do them will cause all sorts of problems.

(Opposed) None.

**Persons Testifying:** (In support) Vickie Kennedy, Department of Labor and Industries.

(In support with concerns) Dave Kaplan, Washington Self-Insurers Association; David Lauman, Washington State Society for Justice; and Gary Fasso, Northwest Carpenters.

**Persons Signed In To Testify But Not Testifying:** None.