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SENATE BILL 5461

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Haugen and Holmquist Newbry

Read first time 01/26/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to claims management by retrospective rating plan  
2 employers and groups; and adding a new section to chapter 51.18 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.18 RCW  
5 to read as follows:

6 (1) In addition to those general powers and rights deemed  
7 appropriate by the department, retrospective rating plan employers and  
8 groups who administer their plans with an approved claims administrator  
9 shall have the authority to assist the department in the processing of  
10 claims. However, the department retains the final authority over  
11 decisions with respect to any individual claim. The authority of  
12 retrospective rating plan employers and groups includes, but is not  
13 limited to, the following:

14 (a) Authorization to schedule medical examinations and  
15 consultations, using only qualified persons from the department's  
16 approved examiner list. No more than two independent medical exams for  
17 each claim may be scheduled by the claims administrator within any  
18 twenty-four month period. An independent medical exam may be scheduled  
19 when the claim file includes medical reports indicating that an exam

1 may be necessary for any of the following reasons: Establishing a  
2 diagnosis, outlining a program of treatment, evaluating what, if any,  
3 conditions are related to the claimed industrial injury or occupational  
4 disease, determining whether an industrial injury or occupational  
5 disease has aggravated a preexisting condition, establishing an  
6 impairment rating when the claim file medical reports indicate that the  
7 worker's claim-related condition is at maximum medical improvement,  
8 evaluating whether the industrial injury or occupational disease has  
9 worsened, or evaluating the worker's mental or physical restrictions as  
10 well as the worker's ability to work. The results of any independent  
11 medical exam scheduled under this subsection must be sent by the  
12 examiner or independent medical examination panel directly to the  
13 department for the claimant's claim file. The department shall  
14 strictly enforce penalties under RCW 51.32.110 for refusals to submit  
15 to medical examinations scheduled by retrospective rating plan  
16 employers or groups, obstruction of the same, or other prohibited  
17 actions set out in RCW 51.32.110.

18 (b) Authorization to schedule vocational assessments using only  
19 qualified providers from a qualified provider list developed by the  
20 department. Providers may be selected based on department quality or  
21 performance indicators and based on industry experience. Any  
22 vocational assessment resulting from a referral under this section must  
23 be sent by the vocational rehabilitation counselor directly to the  
24 department for the claimant's claim file.

25 (c) Authorization to close claims as provided by this subsection.  
26 If a claim with date of injury or manifestation of occupational disease  
27 on or after January 1, 2012: (i) Involves only medical treatment  
28 and/or the payment of temporary disability compensation under RCW  
29 51.32.090 for a period of thirty days or less; (ii) at the time medical  
30 treatment is concluded, does not involve permanent disability; (iii) is  
31 one with respect to which the department has not intervened under  
32 subsection (2) of this section; and (iv) concerns an injured worker who  
33 has returned to work with the retrospective rating plan employer or  
34 group at the worker's previous job or at a job that has at least  
35 ninety-five percent of at-injury wages and benefits, the claim may be  
36 closed by the retrospective rating plan employer or group, subject to  
37 reporting of claims to the department in a manner prescribed by  
38 department rules adopted under chapter 34.05 RCW. No later than at the

1 time of closure for such claims, the retrospective rating plan employer  
2 or group shall forward to the worker a notification developed by the  
3 department describing in nontechnical language the worker's rights  
4 under this title.

5 (2) If a dispute arises from the handling of any claim under this  
6 section, the injured worker, or retrospective rating plan employer or  
7 group, may request the department to intervene.

8 (3) The department may require the retrospective rating plan  
9 employer or group to notify the department prior to exercising any  
10 authority authorized by this section. Rules adopted under this section  
11 must minimize the department's need to respond and ensure that any  
12 delay in response by the department does not impede the timely  
13 administration of the claim. Charges incurred by the retrospective  
14 rating plan employer or group for independent medical examinations or  
15 vocational rehabilitation assessments shall be charged against the  
16 claim.

17 (4) For the purposes of this section, "approved claims  
18 administrator" means a person who meets department qualifications to  
19 manage industrial insurance claims for retrospective rating plan  
20 employers and groups. Any claims managers employed by the approved  
21 claims administrator to manage retrospective rating plan claims must  
22 complete training approved or provided by the department as established  
23 in rule, and are subject to department audit or review of their claims  
24 management process. The director shall take corrective action, subject  
25 to appeal to the board of industrial insurance appeals, against a  
26 retrospective rating plan employer or group that has received authority  
27 to assist the department with processing of claims, if the director  
28 determines that a claims manager under its direction is not following  
29 proper industrial insurance claims procedures. Corrective actions  
30 taken by the director may include:

31 (a) Probationary period of time for the claims manager;

32 (b) Additional mandatory training for claims management personnel;

33 and

34 (c) Monitoring of the activities of the employer or group to  
35 determine progress towards compliance.

36 The director shall adopt rules defining the corrective actions  
37 which may be taken in response to a given condition. If the director  
38 determines that compliance has been attained, no further action shall

1 be taken. If compliance has not been attained, the director may take  
2 additional corrective action including the removal of the additional  
3 authority to assist the department in the processing of claims under  
4 this section. The withdrawal of approval revokes the ability of the  
5 approved claims administrator to exercise authority under this section,  
6 but does not otherwise affect the administrator's status or the  
7 retrospective rating plan employer or group's status in the  
8 retrospective rating program.

9 (5) The department may adopt rules to implement this section.

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