
SENATE BILL 5112

State of Washington

63rd Legislature

2013 Regular Session

By Senators Holmquist Newbry, Sheldon, Braun, and Hewitt

Read first time 01/18/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to independent medical exam and consultation and
2 vocational rehabilitation assessment scheduling authority for qualified
3 retrospective rating plan employers and groups; amending RCW
4 51.04.1101; and adding a new section to chapter 51.18 RCW.

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

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

8 (1) In addition to those general powers and rights deemed
9 appropriate by the department, retrospective rating plan employers and
10 groups may assist the department in the processing of claims as
11 provided in this section. The department retains the final authority
12 over decisions with respect to any individual claim. Claims
13 representatives for retrospective rating plan employers and groups may:

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

1 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 examination 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 must use the
14 same criteria it applies to department requested examinations to impose
15 penalties under RCW 51.32.110 for a worker's refusal to submit to a
16 medical examination or obstruction of an examination; and

17 (b) Schedule vocational rehabilitation assessments using only
18 qualified providers approved by the department. Providers must be
19 selected based on experience with the industry involved. Any
20 vocational rehabilitation assessment resulting from a referral under
21 this subsection must be sent by the vocational rehabilitation counselor
22 directly to the department for the claimant's claim file.

23 (2) If a dispute arises from the handling of any claim under this
24 section, the injured worker, or retrospective rating plan employer or
25 group, may request the department to intervene. When exercising any
26 authority under this section, a retrospective rating plan employer or
27 group must inform a worker in writing that the worker may request the
28 department to intervene at any time.

29 (3) The department must require the retrospective rating plan
30 employer or group to notify the department prior to exercising any
31 authority authorized by this section. Rules adopted under this section
32 must minimize the department's need to respond and ensure that any
33 delay in response by the department does not impede the timely
34 administration of the claim. Providers must bill the department for
35 their services based on the medical aid rules and fee schedules in
36 effect at the time of the examination.

37 (4) Charges incurred by the retrospective rating plan employer or

1 group for independent medical examinations or vocational rehabilitation
2 assessments must be charged against the claim.

3 (5) The department shall establish training requirements by rule
4 for exercising the authority under this section. At least one claims
5 representative for each retrospective rating plan employer or group
6 exercising the authority under this section must have received the
7 training.

8 (6)(a) The director may take corrective action, subject to RCW
9 51.52.050, against a retrospective rating plan employer or group if the
10 director determines that a claims representative under its direction is
11 not following proper industrial insurance claims procedures under this
12 section. Corrective actions taken by the director may include:

13 (i) A probationary period of time for the claims representative;

14 (ii) Additional mandatory training for the claims representative;

15 and

16 (iii) Monitoring of the activities of the claims representative to
17 determine progress towards compliance.

18 The director shall adopt rules defining the corrective actions in
19 response to final determinations of failure to follow proper
20 procedures.

21 (b) If the director determines that compliance has been attained,
22 no further action may be taken. If compliance has not been attained,
23 the director may take additional corrective action including
24 restricting the retrospective rating plan employer or group from
25 exercising the authority under this section. Restricting the exercise
26 of authority under this section does not otherwise affect the claim
27 representative's status or the retrospective rating plan employer's or
28 group's status in the retrospective rating program.

29 (7) Retrospective rating plan employers and groups must send to the
30 claim file maintained by the department any written communication made
31 under this section with a medical provider or vocational services
32 provider not otherwise required to be submitted to the claim file.

33 (8) In addition to rules required to be adopted under this section,
34 the department may adopt additional rules to implement this section.

35 **Sec. 2.** RCW 51.04.1101 and 2011 1st sp.s. c 37 s 801 are each
36 amended to read as follows:

37 (1) The joint legislative audit and review committee, in

1 consultation with the department of labor and industries and the
2 workers' compensation advisory committee, shall conduct a performance
3 audit of the workers' compensation claims management system, including
4 self-insured claims. The joint legislative audit and review committee
5 may contract with an independent expert in workers' compensation claims
6 management to assist with the audit.

7 (2) The audit shall:

8 (a) Evaluate the extent to which the department: (i) Makes fair
9 and timely decisions, and resolves complaints and disputes in a timely,
10 fair, and effective manner; and (ii) communicates with employers and
11 workers in a timely, responsive, and accurate manner, including
12 communication about review and appeal rights, and including the use of
13 plain language and sufficient opportunities for face-to-face meetings;

14 (b) Determine if current claims management organization and service
15 delivery models are the most efficient available; analyze organization
16 and delivery for retrospective rating plan participants as compared to
17 nonparticipants to identify differences and how those differences
18 influence retrospective rating plan refunds; and determine whether
19 current initiatives, including the scheduling authority granted to
20 retrospective rating plan employers and groups under section 1 of this
21 act, improve service delivery, meet the needs of current and future
22 workers and employers, improve public education and outreach, and are
23 otherwise measurable; and

24 (c) Make recommendations regarding administrative changes that
25 should be made to improve efficiency while maintaining high levels of
26 quality service to help address system costs, and any needed
27 legislative changes to implement the recommendations.

28 (3) The joint legislative audit and review committee shall submit
29 progress reports by December 1, 2012, and December 1, 2013, and the
30 results of the audit by June 30, 2015, to the appropriate committees of
31 the legislature.

32 (4) This section expires December 31, 2015.

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