

2 **SB 6299** - S COMM AMD
3 By Committee on Commerce & Labor

4

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

7 "Sec. 1. RCW 51.36.110 and 1986 c 200 s 2 are each amended to read
8 as follows:

9 The integrity of the industrial insurance program of this state
10 depends in large part upon provision of quality health care to workers
11 covered under Title 51 RCW, and the provision of such services is of
12 paramount importance. Medically unnecessary or inappropriate health
13 care delays the healing process, have grave potential for further
14 injury to workers.

15 Health care providers have no vested right to treat workers of this
16 state covered under Title 51 RCW, and the department shall provide for
17 health care for these workers under such terms and conditions as are in
18 the best interests of the workers.

19 (1) Therefore, the director of the department of labor and
20 industries or the director's ((authorized representative)) designee
21 shall have the authority to:

22 ((+1)) (a) Conduct audits and investigations of providers of
23 medical, dental, vocational, and other health services furnished to
24 ((industrially injured)) workers covered under Title 51 RCW pursuant to
25 Title 51 RCW. In the conduct of such audits or investigations, the
26 director or the director's ((authorized representatives)) designee may
27 examine all records or bills for submission of payment, or portions
28 thereof, including patient records, for which services were rendered by

1 a (~~health services~~) provider and reimbursed by the department or
2 self-insurer, notwithstanding the provisions of any other statute which
3 may make or purport to make such records privileged or confidential:
4 PROVIDED, That no original patient records shall be removed from the
5 premises of the health services provider, and that the disclosure of
6 any records or information obtained under authority of this section by
7 the department of labor and industries is prohibited and constitutes a
8 violation of RCW 42.22.040, unless such disclosure is directly
9 connected to the official duties of the department: AND PROVIDED
10 FURTHER, That the disclosure of patient information as required under
11 this section shall not subject any physician or other health services
12 provider to any liability for breach of any confidential relationships
13 between the provider and the patient: AND PROVIDED FURTHER, That the
14 director or the director's (~~authorized representative~~) designee shall
15 destroy all copies of patient medical records in their possession upon
16 completion of the audit, investigation, or proceedings.

17 Determinations by the department following any audit or
18 investigation may be made without examination of the worker by a health
19 care provider.

20 All information obtained by the department pursuant to this section
21 shall be confidential and not subject to the disclosure requirements of
22 chapter 42.17 RCW. Nothing herein shall preclude the use of such
23 information by the department of labor and industries or its legal
24 representatives in any proceeding, including an appeal by a provider or
25 by a worker on issues involving a provider, before the board of
26 industrial insurance appeals or the courts of this state;

27 ~~((2))~~ (b) Deny or reduce payment or demand reimbursement or
28 recoupment, with or without a penalty, of sums inappropriately paid to
29 providers. Any amounts paid within the thirty-six calendar months
30 immediately preceding the date of the demand may be included in the

1 demand: PROVIDED, That whenever any payment to a provider has been
2 induced by fraud the department may terminate or suspend eligibility to
3 participate as a provider of services furnished to any or all workers
4 covered under Title 51 RCW pursuant to Title 51 RCW and the provisions
5 of RCW 51.32.240(4) shall apply;

6 (c) Approve or deny applications to participate as a provider of
7 services furnished to ((industrially injured)) any or all workers
8 covered under Title 51 RCW pursuant to Title 51 RCW; ((and

9 ~~(3))~~ (d) Terminate or suspend eligibility to participate as a
10 provider of services furnished to ((industrially injured)) any or all
11 workers covered under Title 51 RCW pursuant to Title 51 RCW for
12 patterns of medically unnecessary or inappropriate health care
13 independent of any action or inaction by any other state agency, board,
14 or commission including, but not limited to, those disciplinary
15 authorities established in Title 18 RCW; and

16 (e) Adopt, promulgate, amend, and rescind administrative rules, in
17 accordance with the administrative procedure act, chapter 34.05 RCW, to
18 carry out the policies and purposes of this chapter.

19 (2) The provisions of this chapter shall apply to the provision of
20 health care on any claim without regard to the date of injury or
21 disease or the date the services were rendered.

22 (3) In no case shall a worker be responsible for the payment of any
23 sum, or part thereof, recouped or demanded from a provider under this
24 section.

25 (4) Whenever the department has taken any action pursuant to this
26 section resulting in the termination or suspension of eligibility to
27 treat an injured worker, the department shall assist the affected
28 worker in the selection of a new provider."

1 **"Sec. 2.** RCW 51.52.060 and 1986 c 200 s 11 are each amended to
2 read as follows:

3 Any worker, beneficiary, employer, health care provider or other
4 person aggrieved by an order, decision, or award of the department
5 must, before he or she appeals to the courts, file with the board and
6 the director, by mail or personally, within sixty days from the day on
7 which such copy of such order, decision, or award was communicated to
8 such person, a notice of appeal to the board: PROVIDED, That a health
9 services provider or other person aggrieved by a department order or
10 decision only making demand, whether with or without penalty, for
11 repayment of sums paid to a provider of medical, dental, vocational, or
12 other health services rendered to an industrially injured worker must,
13 before he or she appeals to the courts, file with the board and the
14 director, by mail or personally, within twenty days from the day on
15 which such copy of such order or decision was communicated to the
16 health services provider upon whom the department order or decision was
17 served, a notice of appeal to the board. Within ten days of the date
18 on which an appeal has been granted by the board, the board shall
19 notify the other interested parties thereto of the receipt thereof and
20 shall forward a copy of said notice of appeal to such other interested
21 parties. Within twenty days of the receipt of such notice of the
22 board, the worker or the employer may file with the board a cross-
23 appeal from the order of the department from which the original appeal
24 was taken: PROVIDED, That nothing contained in this section shall be
25 deemed to change, alter or modify the practice or procedure of the
26 department for the payment of awards pending appeal: AND PROVIDED,
27 That failure to file notice of appeal with both the board and the
28 department shall not be ground for denying the appeal if the notice of
29 appeal is filed with either the board or the department: AND PROVIDED,
30 That, if within the time limited for filing a notice of appeal to the

1 board from an order, decision, or award of the department, the
2 department shall direct the submission of further evidence or the
3 investigation of any further fact, the time for filing such notice of
4 appeal shall not commence to run until such person shall have been
5 advised in writing of the final decision of the department in the
6 matter: PROVIDED, FURTHER, That in the event the department shall
7 direct the submission of further evidence or the investigation of any
8 further fact, as above provided, the department shall render a final
9 order, decision, or award within ninety days from the date such further
10 submission of evidence or investigation of further fact is ordered
11 which time period may be extended by the department for good cause
12 stated in writing to all interested parties for an additional ninety
13 days: PROVIDED, FURTHER, That the department, either within the time
14 limited for appeal, or within thirty days after receiving a notice of
15 appeal, may modify, reverse or change any order, decision, or award, or
16 may hold any such order, decision, or award in abeyance for a period of
17 ninety days which time period may be extended by the department for
18 good cause stated in writing to all interested parties for an
19 additional ninety days pending further investigation in light of the
20 allegations of the notice of appeal, and the board shall thereupon deny
21 the appeal, without prejudice to the appellant's right to appeal from
22 any subsequent determinative order issued by the department: AND
23 PROVIDED FURTHER, That the board may not issue a stay of a department
24 order issued under RCW 51.36.110 unless the appealing party can
25 demonstrate by substantial evidence that it will prevail in a hearing
26 on the merits. A decision on the motion for a stay must be based on
27 written affidavits and documentary evidence, including the department's
28 file, as may be submitted by the parties. An industrial appeals judge
29 who hears or decides a motion for a stay may not, without consent of

1 the parties, participate in writing the proposed decision and order in
2 the appeal."

3 "NEW SECTION. Sec. 3. A new section is added to chapter 42.17 RCW
4 to read as follows:

5 The disclosure requirements of this chapter shall not apply to
6 records and information obtained by the department of labor and
7 industries through the audit activities authorized by RCW 51.36.110."

8 "NEW SECTION. Sec. 4. A new section is added to chapter 51.36 RCW
9 to read as follows:

10 When any determination made by the department that demands payment
11 of a penalty or repayment of any sums deemed owing under this title
12 becomes final, the amount owing may be recovered by the department as
13 follows:

14 (1) Any and all amounts may be offset at any time against future
15 payments due the provider under any claim with the state fund or self-
16 insurer, as the case may be; and

17 (2) The department may collect those sums by commencement of a
18 civil action in the name of the state and paid into the medical aid
19 fund or reimbursed to the self-insurer, as the case may be; and

20 (3) The director or the director's designee may file with the clerk
21 of any county within the state a warrant in the amount of the sums
22 owing plus interest from the date the order became final. The clerk of
23 the county in which the warrant is filed shall immediately designate a
24 superior court cause number for such warrant and the clerk shall cause
25 to be entered in the judgment docket under the superior court cause
26 number assigned to the warrant, the name of the provider mentioned in
27 the warrant, the amount of the penalties and repayment owing plus
28 interest accrued, and the date when the warrant was filed. The amount

1 of the warrant as docketed shall become a lien upon the title to and
2 interest in all real and personal property of the provider against whom
3 the warrant is issued, the same as a judgment in a civil case docketed
4 in the office of the clerk. The sheriff shall then proceed in the same
5 manner and with like effect as prescribed by law with respect to
6 execution or other process issued against rights or property upon
7 judgments in the superior court. The warrant so docketed shall be
8 sufficient to support the issuance of writs of garnishment in favor of
9 the department in the manner provided by law in the case of judgment,
10 wholly or partially unsatisfied. The clerk of the court shall be
11 entitled to a filing fee of five dollars, which shall be added to the
12 amount of the warrant. A copy of the warrant shall be mailed to the
13 provider within three days of filing with the clerk; and

14 (4) The director or the director's designee may issue to any
15 person, firm, corporation, municipal corporation, political subdivision
16 of the state, public corporation, or agency of the state, a notice and
17 order to withhold and deliver property of any kind if there is reason
18 to believe that there is in the possession of the person, firm,
19 corporation, municipal corporation, political subdivision of the state,
20 public corporation, or agency of the state, property that is due or
21 owing or belonging to any provider upon whom a warrant has been served
22 by the department for payments due the department. The notice and
23 order to withhold and deliver shall be served by the sheriff of the
24 county or by the sheriff's deputy, or by any authorized representatives
25 of the director. Any person, firm, corporation, municipal corporation,
26 political subdivision of the state, public corporation, or agency of
27 the state upon whom service has been made shall answer the notice
28 within twenty days exclusive of the day of service, under oath and in
29 writing, and shall make true answers to the matters inquired of in the
30 notice and order to withhold and deliver. In the event there is in the

1 possession of the party named and served with the notice and order, any
2 property that may be subject to the claim of the department, such
3 property shall be delivered forthwith to the director or the director's
4 authorized representative upon demand. If the party served and named
5 in the notice and order fails to answer the notice and order within the
6 time prescribed in this section, the court may, after the time to
7 answer the order has expired, render judgment by default against the
8 party named in the notice for the full amount claimed by the director
9 in the notice together with costs; and

10 (5) In all cases of probate, insolvency, assignment for the
11 benefits of creditors, or bankruptcy, the claim of the state for the
12 payments due shall be a lien prior to all other liens or claims and on
13 a parity with prior tax and liens, and the mere existence of such cases
14 or conditions shall be sufficient to create such lien without any prior
15 or subsequent action by the state. All administrators, receivers, or
16 assignees for the benefit of creditors shall notify the department of
17 such administration, receivership, or assignment within thirty days
18 from date of their appointment and qualification.

19 The department must commence action pursuant to subsections (2)
20 through (4) of this section within one year of the date its order
21 becomes final."

22 "NEW SECTION. **Sec. 5.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and shall take
25 effect immediately."

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4 On page 1, line 2 of the title, after "insurance;" strike the
5 remainder of the title and insert "amending RCW 51.36.110 and
6 51.52.060; adding a new section to chapter 42.17 RCW; adding a new
7 section to chapter 51.36 RCW; and declaring an emergency."