

HOUSE BILL REPORT

ESHB 1725

As Amended by the Senate

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

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

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by 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].

Floor Activity:

Passed House: 3/5/11, 96-1.

Senate Amended.

Passed Senate: 4/5/11, 48-0.

House Refused to Concur.

Senate Amended.

Passed Senate: 4/21/11, 47-0.

Brief Summary of Engrossed Substitute Bill

- Allows the Department of Labor and Industries to send notices electronically when requested by the worker, employer, or other person affected.
- Provides for direct practice providers to provide treatment to injured workers.
- Makes other changes regarding the administration of workers' compensation.

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, Miloschia, Moeller, Ormsby, Roberts, Taylor and Warnick.

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.

Staff: Joan Elgee (786-7106).

Background:

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. For State Fund employers, participation in a retrospective rating (retro) plan is available for employers or group of employers that meet specified requirements. Participation in retro allows an employer or a group of employers to assume a portion of industrial insurance risk and receive premium refunds or be assessed additional premiums based on claim losses.

The Department issues various notices under the 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.

Direct practice is a type of primary health care in which providers enter agreements with patients to provide primary care services for a monthly fee. State law regulates direct practice.

Summary of Engrossed Substitute Bill:

Industrial insurance notices and orders, other than claim closure orders, may be sent electronically if requested by the employer, worker, beneficiary, or other person affected. Persons choosing to receive electronic correspondence and legal notices must receive information to assist them in ensuring that all electronic documents and communications are received. 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.

The Director of the Department must adopt rules to assure an injured worker may receive care from a direct practice provider. Any billing rule requiring a provider to bill for services does not apply to a direct practice. However, the Department may adopt rules requiring a direct practice to provide information to allow the Department to establish industrial insurance rates and retro plan refunds and assessments. The Department may also adopt rules regarding direct practice fees to assure that workers are not paying for benefits other than what is permitted by law. Payment by an employer for direct practice services does not disqualify an employer from participating in retro, a group sponsor from promoting a retro plan, or a plan administrator from administering a retro plan.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment modifies the provisions relating to direct practice providers. The Department of Labor and Industries (Department) must report to the appropriate committees of the Legislature by December 1, 2011, on changes needed to ensure an injured worker may receive care from a direct practice provider and that the injured worker is not paying directly for medical services for the industrial injury. The report must provide a timeline for rule development with a goal to have changes in place by July 1, 2013. The report must also include data required from direct care providers necessary to establish premium rates, experience modification factors, and retrospective rating (retro) adjustments; medical cost or payment information that may be required from retro participants; any requirements for direct care providers to participate in the medical provider network and ensure the Department has information to efficiently manage worker claims; and any other issues or barriers to direct care provider participation in the workers' compensation system. Payment by an employer for direct care services does not disqualify the employer from participating in retro, any related group sponsor from promoting a retro plan, or any related plan administrator from administering a retro plan. The retro employer, group sponsor, or plan administrator must provide any medical cost or payment information required by the Department. Before the retro adjustment for the plan year beginning January 1, 2012, the Department must determine the information needed and any changes to the retro premium and claim cost calculation to maintain appropriate and equitable retro refunds when employers pay for direct care services. The retro changes apply beginning with the January 1, 2012, plan year. Rule-making by the Department is permitted.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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.