

# Washington Workers' Compensation Reforms

2011 Legislative Session



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Washington State's Chamber of Commerce

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May 26, 2011

# 2011 Workers' Compensation Reforms

- Major Reforms
  - Statewide Provider Network/COHE expansion (SB 5801)
  - Settlement Option, Return-to-Work, and Disability System Changes (HB 2123)
- Other Policy Changes
  - Transparency in Rate Notices (SB 5278)
  - Workers' Comp Program Admin Efficiencies (HB 1725)
  - Vocational Rehabilitation Pilot Changes (HB 1726)

# Statewide Provider Network – SB 5801

- Creates a single statewide provider network for treatment of injured workers of state fund and self-insured employers
- Requires the statewide expansion of the Centers of Occupational Health and Education (COHE)
- Details:
  - **Network development:** L&I will establish network considering input from health care provider groups and system stakeholders

# Statewide Provider Network – SB 5801

- **Minimum Standards**

- Network providers must follow L&I coverage decisions and treatment guidelines and other appropriate national treatment guidelines
- Network providers must be credentialed
  - Current malpractice insurance
  - No excessive previous malpractice judgments or settlements
  - No licensing or disciplinary action or loss of privileges
  - Privileges in at least one hospital for certain specialties
  - Credentialed by another health plan or alternative criteria where applicable.

# Statewide Provider Network – SB 5801

- **Preferred Tier**
  - Providers with excellent performance may qualify for an occupational health best practice tier within the network, entitling them to financial and other incentives
  - Details to be developed
- **Worker Choice of Provider**
  - Injured workers have choice of provider in network
  - First visit for treatment may be with non-network provider

# Statewide Provider Network – SB 5801

- **Removal of Provider from Network**
  - Provider does not meet minimum standards
  - Pattern of low-quality care and risk of harm to patient
  - Otherwise, network contracts automatically renew
- **COHE**
  - L&I will expand the COHE model statewide by 2015
  - L&I will use the COHE model for R&D of occupational health best practices for use in the provider network

# Vision for Medical Provider Network

2013: Launch the network



2015 and into future

All Washington Providers

**L&I's Provider Network**

- Network providers must meet minimum credentialing standards, follow policy and evidence-based guidelines
- Network will include a wide range of provider types and maintain access to care
- Injured workers have choice of network providers

**Network providers who meet occupational health best-practice standards**

- Establish second tier within network based on occupational health best practices
- Pilot and apply new occupational-health best practices throughout injured workers' recovery
- Financial and non-financial incentives available for provider participation
- New COHEs expand access geographically

- Injured workers can see non-network providers only for first visit
- Some providers don't have work-comp practices
- Some may not meet minimum credentialing standards

L&I's Provider Network

**Network providers who meet occupational health best-practice standards**

- Apply new best practice standards to second tier
- Better integration of primary occupational health, specialty, and chronic pain care.
- Broader use of financial and non-financial incentives for provider participation
- Additional new COHEs expands access to injured workers statewide

# Settlements, Return to Work, and Long Term Disability – HB 2123

- Claim Resolution Settlement Option
- Washington Stay-at-Work Program
- Occupational Disease Study
- Offset of Prior Disability Awards for Pensioners
- Suspension of Cost-of-Living Adjustments for 2012
- Rainy Day Fund
- Fraud Prevention Initiative
- Claims Management Performance Audit
- Safety and Health Investment Grants

# Claim Resolution Settlement Option

- Begins January 1, 2012
- Applies to injured workers age 55 and over:
  - Starting January 1, 2015, age 53 and over
  - Starting January 1, 2016, age 50 and over
- Allows settlement of all aspects of an allowed claim excluding medical benefits
- Settlement award must be paid out according to a periodic payment schedule(structured settlement):
  - Up to six times state's average monthly wage may be paid up front in a lump sum (approx. \$24,000)
  - Periodic payments must be at least 25% but not more than 150% of the state's average monthly wage (approx. \$1,000 to \$6,000)

# Claim Resolution Settlement Option

- Details:
  - 180 days must elapse after order allowing claim becomes final and binding
  - L&I negotiates the state fund settlement. The parties are the worker, the employer, and the Department
    - Unless the employer's experience rating is not affected, the employer cannot be found, are no longer in business, or fail to respond/decline participation in process
  - The parties to a self-insured settlement are the self-insured employer and worker
  - The self-insured employer negotiates the self-insured settlement, although an unrepresented worker may request assistance or participation of the injured worker ombudsman

# Claim Resolution Settlement Option

- Settlements must be approved by the Board of Industrial Insurance Appeals
- Unrepresented workers must have a settlement conference with an Industrial Appeals Judge (IAJ) who must approve or reject the settlement
- The IAJ must determine whether the settlement is in the best interests of the worker, considering
  - Nature and extent of injuries/disabilities
  - Age and life expectancy
  - Other benefits worker is receiving
  - Marital or domestic partnership status
- The IAJ forwards an order allowing settlement to the Board for final approval

# Claim Resolution Settlement Option

- The parties have 30 days after Board approval in which to revoke consent before the agreement becomes final
- All benefits must be paid up to the date the agreement becomes final
- All payments made under a settlement agreement must be reported to the Department as claim costs
- Self-Insured employers may use third party administrator to disburse structured settlement payments
- Claims closed by agreement may be reopened for medical treatment only under existing law
- The Department must maintain copies of settlement agreements and furnish copies to any party negotiating a subsequent agreement on an allowed claim.

# Claim Resolution Settlement Option

- Employers may not consider a prior agreement when making any decision about hiring or terms or conditions of employment
- Dispute Resolution:
  - Parties aggrieved by the failure of another party to comply with the agreement have 1 year from failure to petition Board for relief.
  - Board can impose penalty of 25% of the unpaid settlement amount for non-compliance
  - Employers who use the settlement process to harass or coerce any party can be expelled from retrospective ratings groups or decertified from self-insurance
  - Attorney's fees for settlement agreement services are capped at 15% of the settlement amount

# Claim Resolution Settlement Option

- Every December 1 from 2011 through 2014, the Department must report to the Labor committees of the Legislature on implementation of the settlement option
- In 2015, 2019, and 2023, the Department must contract for an independent study of the quality and effectiveness of the program, and utilization and outcome for workers

# Washington Stay-at-Work Program

- Begins when law goes into effect (and Department is able to administer)
- Applies to state fund employers
- Provides a subsidy to employers who bring injured worker back to light duty or transitional work
- Pays up to 50% of wages for up to 66 days within a two-year period
- Also offers reimbursement for training materials, clothing, or tools and equipment up to specified maximums

# Washington Stay-at-Work Program

- Employers' experience ratings are not affected by a request for or receipt of subsidies
- The Department will create a separate account for payment of subsidies, funded by assessments on employers, one-half of which may be collected from workers
- The Department's actuaries project that the program will contribute to an overall reduction in Accident Fund premiums that exceeds the amount of the assessment

# Occupational Disease Study

- The Department must contract with an independent researcher to prepare a study:
  - The frequency and severity of occupational disease claims
  - The impact of occupational disease on long term disability and pension trends
  - The statutory definition of occupational disease and its comparison to other states and jurisdictions, and
  - The statute of limitation for filing occupational disease claims and its comparison to other states and jurisdictions
- The Workers' Comp Advisory Committee recommends the researcher
- The study report is due back December 1, 2012

# Offset of Prior Disability Awards

- Allows the Department or self-insured employer to offset all prior permanent partial disability (PPD) benefits paid if a worker is later awarded a permanent total disability (pension)
- When PPD benefits are paid out over time, interest on the unpaid balance will no longer be included in the payment

# Suspension of the Cost-of-Living Adjustment

- The anticipated Cost-of-Living Adjustment that would be payable July 1, 2011 to time loss and pension benefits recipients is suspended for one year
- There is no “catch-up” of the unpaid COLA
- The scheduling of the first COLA payment to an injured worker is delayed until the second July 1 following an injury

# Rainy Day Fund

- A “Rainy Day Fund” is created to help mitigate future premium rate increases
- Any excess in assets above 110% of liabilities is transferred to the fund, up to a maximum of 130% of liabilities
- The fund may be used to:
  - Reduce a rate increase
  - Aid businesses in recovering from or during economic recessions
  - Cure insolvencies in the trust fund
- The Workers’ Comp Advisory Committee must appoint a Finance Subcommittee to make recommendations to fund maximum to the Legislature by December 1, 2011

# Fraud Prevention Initiative

- The Department is directed to apply best practices developed to combat employer fraud to address instances of worker and provider fraud including:
  - Participate in a national information exchange with other workers' comp insurers
  - Increase public awareness of employer, worker, and provider fraud issues and how to report
  - Establish criteria for periodic review of pension recipients as to disability and employability
  - Identify provider billing patterns to target abusive practices
- The activities must include approaches to prevent, educate, and ensure compliance

# Claims Management Performance Audit

- The Joint Legislative Audit & Review Committee (JLARC) is directed to engage in an audit of state fund claims management, evaluating:
  - Fairness and timeliness of decision-making
  - Timeliness, responsiveness, and accuracy of communications
  - Efficiency of claims management organization and service delivery model
  - Analyze retro versus non-retro claims management
- JLARC is to make recommendations for administrative and legislative changes to improve the system
- Report due June 30, 2015, with progress reports December 1, 2012 and 2013

# •Safety and Health Investment Grants

- The Department is authorized to provide funding from the Medical Aid fund for grants addressing:
  - Prevention of workplace injuries, illnesses and fatalities
  - Creation of early return to work programs
  - Reduction of long-term disability through cooperation of employers and employees or their representatives
- Funds must be distributed:
  - At least 25% for innovative return-to-work programs
  - At least 25% for small-business specific needs
  - At least 50% for injury/illness prevention

# Projected Cost Savings of Major Reforms

## Non-Appropriated Workers' Compensation Savings (Dollars in Millions)

Legislative Package with Claim Resolution Structured Settlement Agreements		
	FY 12 Only	FY 12-15
Statewide provider network ( <i>passed</i> )	\$41	\$164
COHEs expansion ( <i>passed</i> )	\$0	\$55
<b>Subtotal</b>	<b>\$41</b>	<b>\$219</b>
Washington Stay-At-Work Program	\$16	\$111
Permanent partial disability award offset, interest eliminated	\$99	\$133
1-yr COLA freeze, no catch-up*, delay in first COLA	\$31	\$124
Claim Resolution Structured Settlements for Workers	\$335	\$545
Rainy Day Fund	\$0	\$0
Fraud Prevention Initiative	\$0	TBD
Claim Management Performance Audit by JLARC	\$0	\$0
Occupational Disease Study	\$0	\$0
Safety and Health Investment Grants	(\$3)	(\$10)
<b>Subtotal</b>	<b>\$478</b>	<b>\$903</b>
<b>Total</b>	<b>\$519</b>	<b>\$1,122</b>

Source: Governor's Office

# Other 2011 Workers' Comp Legislation

- **SB 5278, Transparency in Rate Notices**
  - Workers compensation rate notices must clearly identify all programs/services financed by premiums or assessments, including programs not related to workers' compensation.
- **HB 1725, Administrative Efficiencies**
  - Allows notices and orders other than claim closure to be sent electronically on request
  - Allows payment by an employer for direct primary care services without disqualifying the employer from participating in a retrospective rating plan.
- **HB 1726, Vocational Rehabilitation Pilot Clarifications**
  - Statutory pensioners may receive vocational services if the services will substantially improve the worker's quality of life or ability to function in an employment setting but they are not eligible for "option 2" (partial claim settlement).
  - Ability to reopen a claim after an "option 2" election is clarified.
  - Timelines for choosing vocational benefits and providing valid job offers to workers eligible for vocational benefits are changed.

# For More Information

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