Engrossed Substitute House Bill 1725

Chapter 290, Laws of 2011

Report to the Legislature

January 2012

Introduction

Engrossed Substitute House Bill (ESHB) 1725 was signed into law by the governor on May 10, 2011. Section five of the legislation mandates the creation and submission of this report.

This legislation allows the Department of Labor and Industries (L&I) to work more efficiently by creating an option for workers' compensation decisions to be communicated electronically. Electronic communication will occur if requested by the employer, worker, medical provider, or other affected party. The legislation also allows the use of mail tracking systems other than certified mail.

Introduced at the request of L&I, this legislation was amended from the original proposal to address concerns related to "direct care providers." As adopted, it provides that payment by an employer for direct primary health care services on a workers' compensation claim does not disqualify the employer, retrospective rating group, or plan administrator from participation in the department's Retrospective Rating Program (Retro). It also directs the department to ensure that direct care providers are able to participate in the workers' compensation medical provider network authorized in separate legislation, Substitute Senate Bill (SSB) 5801.

In addition, the department must report to the legislature on the statutory changes needed to ensure an injured worker may receive medical care from direct care providers and that the injured worker is not paying directly for medical services related to their industrial injury or occupational disease. The report must provide a timeline for rule development with a goal to have necessary changes in place by July 1, 2013. It must also include the data the department requires from direct care providers and Retro employers, such as:

- Information necessary to establish premium rates, experience modification factors, and retrospective rating adjustments;
- Medical cost or payment information from retrospective rating participants;
- Requirements specific to direct care providers so they can participate in the statewide medical provider network;
- Information necessary to efficiently manage workers' compensation claims; and
- Any other issues or barriers to participation of direct care providers in the workers' compensation system.

Background

Direct Primary Health Care

Direct primary health care is a new approach for purchasing and providing routine primary health care. A patient and a health care provider enter into a contract in which the provider agrees to provide the patient with routine primary health care services in exchange for a flat monthly fee. Covered services must be specified in the contract and the agreement cannot cover services that are not routine primary health care, such as major surgeries, hospitalization, and prescription medications.

In this approach, there are no insurance companies and no third parties of any kind: just a provider and a patient. There is also minimal billing: providers bill patients a flat monthly fee that covers all services provided under the contract.

The law authorizing direct primary health care, and protecting it from being regulated as a form of insurance, was passed by the Legislature in 2007 (Chapter 48.150 RCW). In 2009, it was amended to allow employers to make payments for a patient worker. This amendment prohibits employers and providers from agreeing to provide care for an employer's employees. Thus, the employer's role is limited to facilitating payment of the monthly fee.

Retrospective Rating Issues

Allowing employers to make the regular monthly payments on behalf of employees seems a convenience to both providers and employees. However, it created a potential problem for employers participating in Washington's workers' compensation Retrospective Rating Program (Retro): since 2000, the rules of the program have prohibited employers from paying providers for medical services covered by the Industrial Insurance Act and threatened an employer that violates this prohibition with permanent expulsion from Retro. Retro employers were concerned that their facilitation of direct care provider payments for their employees could be considered payment for medical services related to a claim if their employee was injured.

Included in ESHB 1725 is a section that addresses this issue. Section three adds a new section to Chapter 51.18 RCW, the chapter that governs Retro. The amendment makes it safe for employers to make payments on behalf of their employees to direct primary health care providers. In other words, employers do not have to be concerned that making monthly payments to direct care providers on behalf of their employees as permitted under Chapter 48.150 RCW will be a basis for expelling them from the Retro Program.

Medical Provider Network

The department is actively working to launch a statewide medical provider network to treat injured workers of both self-insured employers and those insured through the department (the "State Fund"). Minimum credentials or standards for participating providers have been adopted after significant work with an advisory group of business, labor, and medical provider representatives. Next steps include finalizing contract elements and language, and actively recruiting providers to join.

Section five of ESHB 1725 requires the department to ensure direct care providers are able to participate in the network. Based on the network requirements, these providers will be able to participate as long as they meet minimum standards for all network providers. They will be able to continue participation if they abide by requirements of the network contract, currently under development.

Accomplishments to Date

Activities with Direct Care Providers

The department has met twice with representatives of Qliance, the largest direct care provider in Washington State, to discuss how to implement the provisions of the legislation. The department has

collaborated with Qliance to identify and establish a uniform data collection method that will work for the organization and potentially for all direct care providers that wish to participate in the workers' compensation system.

Office of the Insurance Commissioner's Report

The Office of the Insurance Commissioner (OIC) provides an annual legislative report on innovative primary health care delivery. This report describes participation trends, complaints received, and voluntary data reported by direct care practices. The December 1, 2011, report can be found at http://www.insurance.wa.gov/legislative/reports/2011directpractices.pdf.

According to the report's Executive Summary, as of 2011, there were approximately 10,525 patients enrolled in a direct care practice, an increase of 7% compared to 2010. There are 24 practices, including roughly 400 providers.

L&I will use the information from the OIC report to identify direct care practices other than Qliance. We will reach out to these practices to determine their interest in participating in the statewide medical provider network to treat injured workers and whether the data-gathering approach developed with the help of Qliance can be used or modified as a tool to gather information from them.

Guiding Principles

As we worked with Qliance, we and the representatives considered how best to maintain provider choice and medical services for injured workers, to obtain data and information needed to manage worker claims, and keep processes administratively efficient and cost-effective. We also considered the principles behind each of the mandates below:

Retrospective Rating

The Retro Program gives incentive to participating employers to provide safe and healthy workplaces and, when injuries occur, an active return-to-work program to keep workers connected to their employers and working. In return, successful participants receive refunds for a portion of their workers' compensation premiums; employers or groups with claim costs above expected amounts are assessed additional premium.

Medical Provider Network

The new statewide medical provider network to treat injured workers of both State Fund and self-insured employers is intended to provide high quality medical care to workers, and improve their outcomes and related costs to employers and workers as a result.

Claim Suppression

Workers have the right to file a claim any time they are hurt or become ill on the job. Suppressing injured worker claims is prohibited under the law to ensure workers receive the medical care and appropriate benefits to which they are entitled. Significant consequences exist for employers who engage in claim suppression.

Next Steps

Outreach

During 2012, the department will identify additional direct care providers using the report from the OIC and distribute information on how to participate in treating injured workers by joining the medical provider network. They will be informed of the data needed from them and we will work with them on how they can best provide it to us within the constraints of their systems. In addition, the department will identify any other information or work needed to ensure direct care providers are eligible to participate in the statewide provider network.

Data and Reports

The department will establish a centralized database that will include individual workers' compensation claims that received medical services from direct care providers. The database will include each workers' compensation claim number, date of service, and the medical billing code. This will allow the department to estimate the cost of healthcare services provided by the direct care providers. The department will make available quarterly and annual reports on the activities and costs associated with direct care providers. The department will also monitor the claims information we receive from direct care providers, including the number of claims, services provided, and progression of claims beyond direct practice care.

Retrospective Rating

The department will communicate to Retro sponsors and employers regarding information we will need from them. The department also plans to initiate rulemaking to ensure that Retro employers paying direct care providers on behalf of their employees are able to continue to participate in the Retro Program. Rules will be drafted to avoid unintended incentives for engaging in claim suppression.

Rule Timeline

January 2012:

- L&I will begin tracking new claims from direct care providers.
- L&I will monitor the number of claims and the services provided by direct care providers.
- L&I will begin conversations with the Retro community about information we are receiving from direct care providers and information we will need from them regarding participation and payments to direct care providers.
- Status updates will be provided at quarterly Retro Advisory Committee meetings.

August 2012:

- L&I plans to file the pre-proposal statement of inquiry (CR-101) with the Code Reviser's Office for any data and information needed from Retro participants, and any changes related to claim costs and adjustments for direct care services.

September 2012:

- L&I plans to file the notice of proposed rulemaking (CR-102), along with proposed rule language, with the Code Reviser's Office.

October 2012:

- L&I plans to hold public hearings on any rule proposal.

November 2012:

- L&I plans to file the rulemaking order of adoption (CR-103) and the adopted rule language, with the Code Reviser's Office.

December 2012:

- New rules will be effective for January 2013 Retrospective Rating enrollment.

Medical Provider Network

The statewide medical provider network will recruit and sign-up attending providers during 2012, planning to launch the network early 2013. L&I will enroll direct care providers who apply and meet our network requirements.

Legislation Needed

It is unclear at this point what, if any, legislation is required to ensure workers are not paying for medical services related to their industrial injury or occupational disease. Further legislation is not needed for direct care providers to participate in Washington's workers' compensation system.

The number and types of claims for which these providers treat workers, and their associated costs, will become clearer during 2012. This data will inform L&I, legislators, and stakeholders of the level of service provided to injured workers, and whether further changes are recommended or needed. If legislation is appropriate, it will be proposed for the 2013 session.