
SECOND SUBSTITUTE HOUSE BILL 1503

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Conway, McCoy, Wood, Campbell, Williams, Green, Kenney, Moeller, Ormsby and Chase)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to injured worker medical rights; amending RCW
2 51.04.050, 51.36.060, 51.32.110, 51.36.070, and 51.32.112; adding a new
3 section to chapter 51.52 RCW; adding a new section to chapter 51.36
4 RCW; creating new sections; recodifying RCW 51.32.112; repealing RCW
5 51.32.114; and prescribing penalties.

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

7 **Sec. 1.** RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended
8 to read as follows:

9 In all (~~hearings, actions or~~) proceedings before the department
10 (~~or the board of industrial insurance appeals, or before any court on~~
11 ~~appeal from the board,~~) any physician or licensed advanced registered
12 nurse practitioner having theretofore examined or treated the claimant
13 may be required to (~~testify fully~~) make reports requested by the
14 department or self-insurer regarding such examination or treatment, and
15 shall not be exempt from (~~so testifying~~) making reports by reason of
16 the relation of the physician or licensed advanced registered nurse
17 practitioner to patient. In all hearings, actions, or proceedings
18 before the board of industrial insurance appeals, or before any court
19 on appeal from the board of industrial insurance appeals, the claimant

1 shall be deemed to waive the physician-patient privilege under RCW
2 5.60.060, subject to the limitations imposed pursuant to court rules
3 and section 3 of this act.

4 **Sec. 2.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read
5 as follows:

6 (1) Physicians or licensed advanced registered nurse practitioners
7 examining or attending injured workers under this title shall comply
8 with rules and regulations adopted by the director, and shall make such
9 reports as may be requested by the department or self-insurer upon the
10 condition or treatment of any such worker, or upon any other matters
11 concerning such workers in their care. Except under RCW 49.17.210
12 ((and)), 49.17.250, and section 3 of this act, all medical information
13 in the possession or control of any person and relevant to the
14 particular injury in the opinion of the department pertaining to any
15 worker whose injury or occupational disease is the basis of a claim
16 under this title shall be made available ((at any stage of the
17 proceedings)) to the employer, the claimant's representative, and the
18 department upon request, and no person shall incur any legal liability
19 by reason of releasing such information. In all hearings, actions, or
20 proceedings before the board of industrial insurance appeals, or before
21 any court on appeal from the board of industrial insurance appeals,
22 requests for medical information under this subsection are subject to
23 limitations imposed pursuant to court rules and section 3 of this act.

24 (2) Any time that an examining or attending physician or licensed
25 advanced registered nurse practitioner is contacted by the employer, or
26 a representative of the employer, a written report must be generated by
27 the person or entity initiating contact which fully discloses all
28 subjects discussed and responses given. This report must be completed
29 within five days of the meeting, and a copy must be mailed to the
30 worker no later than the fifth day. Failure to comply with this
31 section constitutes a violation of RCW 51.48.080 and the penalty shall
32 be paid to the worker.

33 (3) When an attorney, vocational counselor, nurse case manager, or
34 other representative of the employer seeks to meet with an examining or
35 attending physician or licensed advanced registered nurse practitioner
36 to discuss an injured worker's physical capacities, medical treatment,

1 permanent partial disability, ability to work, or other issues
2 pertaining to the claim:

3 (a) The attorney, vocational counselor, nurse case manager, or
4 other representative of the employer shall give at least seven days'
5 prior written notice to the worker or the worker's designated
6 representative;

7 (b) The worker and the worker's representative have the right to
8 attend and participate in the meeting;

9 (c) The party scheduling the meeting shall make reasonable efforts
10 to coordinate the scheduling of the appointment for the convenience of
11 all parties;

12 (d) The employer or representative of the employer, within five
13 days of the completion of the meeting, shall create a complete report
14 of the meeting, including all questions asked and information provided,
15 and mail a copy to the worker and the worker's designated
16 representative.

17 NEW SECTION. Sec. 3. A new section is added to chapter 51.52 RCW
18 to read as follows:

19 (1)(a) Except as provided in (b) of this subsection, after notice
20 of an appeal under RCW 51.52.060(2), the department, the employer, and
21 the representatives of each, shall not have ex parte contact, to
22 discuss the facts or issues in question in the appeal, with any medical
23 provider who has examined or treated the claimant at the request of the
24 claimant or a treating medical provider, unless written authorization
25 for such contact is given by the claimant or the claimant's
26 representative.

27 (b) Written authorization is not required if the claimant fails to
28 identify or confirm the examining or treating medical provider as a
29 witness as required by the board.

30 (2)(a) Except as provided in (b) of this subsection, after notice
31 of an appeal under RCW 51.52.060(2), the claimant and the
32 representative for the claimant, if any, shall not have ex parte
33 contact, to discuss the facts or issues in question in the appeal, with
34 any medical provider who examined the claimant pursuant to RCW
35 51.36.070, unless written authorization for such contact is given by
36 the department or self-insured employer.

1 (b) Written authorization is not required if the department or
2 self-insurer fails to identify or confirm the medical provider as a
3 witness as required by the board.

4 (3) This section only applies to issues set forth in a notice of
5 appeal under RCW 51.52.060(2).

6 (4) Nothing in this section shall be construed to limit reporting
7 requirements under RCW 51.04.050 and 51.36.060 for issues not set forth
8 in a notice of appeal.

9 **Sec. 4.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
10 as follows:

11 (1) Any worker entitled to receive any benefits or claiming such
12 under this title shall, if requested by the department or self-insurer,
13 submit himself or herself for medical examination, (~~at a time and from~~
14 ~~time to time, at a place reasonably convenient for the worker and as~~
15 ~~may be provided by the rules of the department. An injured worker,~~
16 ~~whether an alien or other injured worker, who is not residing in the~~
17 ~~United States at the time that a medical examination is requested may~~
18 ~~be required to submit to an examination at any location in the United~~
19 ~~States determined by the department or self-insurer)) as authorized in
20 RCW 51.36.070.~~

21 (2) If the worker refuses to submit to medical examination, or
22 obstructs the same, or, if any injured worker shall persist in
23 unsanitary or injurious practices which tend to imperil or retard his
24 or her recovery, or shall refuse to submit to such medical or surgical
25 treatment as is reasonably essential to his or her recovery or refuse
26 or obstruct evaluation or examination for the purpose of vocational
27 rehabilitation or does not cooperate in reasonable efforts at such
28 rehabilitation, the department or the self-insurer upon approval by the
29 department, with notice to the worker may suspend any further action on
30 any claim of such worker so long as such refusal, obstruction,
31 noncooperation, or practice continues and reduce, suspend, or deny any
32 compensation for such period: PROVIDED, That the department or the
33 self-insurer shall not suspend any further action on any claim of a
34 worker or reduce, suspend, or deny any compensation if a worker has
35 good cause for refusing to submit to or to obstruct any examination,
36 evaluation, treatment or practice requested by the department or
37 required under this section.

1 (3) If the worker necessarily incurs traveling expenses in
2 attending the examination pursuant to the request of the department,
3 such traveling expenses shall be repaid to him or her out of the
4 accident fund upon proper voucher and audit or shall be repaid by the
5 self-insurer, as the case may be.

6 (4)(a) If the medical examination required by this section causes
7 the worker to be absent from his or her work without pay:

8 (i) In the case of a worker insured by the department, the worker
9 shall be paid compensation out of the accident fund in an amount equal
10 to his or her usual wages for the time lost from work while attending
11 the medical examination; or

12 (ii) In the case of a worker of a self-insurer, the self-insurer
13 shall pay the worker an amount equal to his or her usual wages for the
14 time lost from work while attending the medical examination.

15 (b) This subsection (4) shall apply prospectively to all claims
16 regardless of the date of injury.

17 **Sec. 5.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to read
18 as follows:

19 (1) Whenever a medical examination is conducted under this title,
20 the worker may be accompanied by a person who may observe the
21 examination. This section does not limit the department or self-
22 insurer's obligation to provide necessary interpreter services.

23 (2) Subject to subsection (3) of this section, whenever the
24 director or the self-insurer deems it necessary in order to resolve any
25 medical issue, the department or self-insurer may, at a time and from
26 time to time at a place reasonably convenient for the worker and as may
27 be provided by department rules, request a worker ((shall)) to submit
28 to examination ((by a physician or physicians selected by the director,
29 with the rendition of a report to the person ordering the
30 examination)). An injured worker, whether an alien or other injured
31 worker, who is not residing in the United States at the time that a
32 medical examination is ordered may be required to submit to an
33 examination at any location in the United States determined by the
34 department or self-insurer.

35 (3)(a) When requesting a medical examination under this section,
36 the department or self-insurer must first request in writing, with a
37 copy of the request submitted to the worker and the worker's

1 representative, if any, that the worker's attending physician or
2 treating provider conduct an examination and make a report on the
3 medical issue in question.

4 (b) If the medical issue is not resolved by the requested
5 examination and report, the department or self-insurer shall request
6 the attending physician or treating provider to make a consultation
7 referral to a provider approved by the director and, where appropriate,
8 licensed to practice in the same field or specialty as the worker's
9 attending physician or treating provider, where appropriate. The
10 consulting provider shall conduct an examination and make a report on
11 the medical issue in question.

12 (4)(a) A provider conducting a medical examination under this
13 section must submit a report to the department or self-insurer and, on
14 the same day that the report is submitted, submit a copy of the report
15 to the worker, the worker's representative, and the worker's attending
16 physician.

17 (b) If the department or self-insurer relies on the examination
18 report to deny, limit, or terminate benefits to a worker, the
19 department or self-insurer must give the workers' attending physician
20 or treating provider no less than thirty days from the physician's or
21 provider's receipt of the report to provide a written response to the
22 report.

23 (5) The department or self-insurer shall provide the physician
24 performing an examination with all relevant medical records from the
25 worker's claim file.

26 (6) The director, in his or her discretion, may charge the cost of
27 such examination or examinations to the self-insurer or to the medical
28 aid fund as the case may be. The cost of said examination shall
29 include payment to the worker of reasonable expenses connected
30 therewith.

31 **Sec. 6.** RCW 51.32.112 and 1993 c 515 s 4 are each amended to read
32 as follows:

33 (1) The department shall ~~((develop standards for))~~ adopt rules
34 governing the conduct of ~~((special))~~ medical examinations ~~((to~~
35 ~~determine permanent disabilities))~~ under this title, including, but not
36 limited to:

1 (a) The qualifications of persons conducting the examinations. To
2 conduct an examination, a provider must, at a minimum, be licensed to
3 practice, at the time of the examination, medicine or surgery under
4 chapter 18.71 RCW, osteopathic medicine and surgery under chapter 18.57
5 RCW, podiatric medicine and surgery under chapter 18.22 RCW, dentistry
6 under chapter 18.30 RCW, chiropractic under chapter 18.25 RCW, or
7 psychology under chapter 18.83 RCW;

8 (b) The criteria for removing examiners from the list of approved
9 examiners, including but not limited to the department determining,
10 after reasonable investigation, that the provider:

11 (i) Committed professional or other misconduct, including a
12 violation of RCW 51.48.280, or demonstrated incompetency in connection
13 with providing medical examinations under this title;

14 (ii) Exceeded the limits of his or her professional competence in
15 conducting medical examinations or made materially false statements
16 regarding his or her qualifications in his or her application as an
17 examiner;

18 (iii) Failed to transmit copies of medical reports, or failed to
19 submit full and truthful medical reports of his or her findings, as
20 required by this title;

21 (iv) Knowingly made a false statement or representation as to a
22 material fact in any medical report made under this title or in
23 testifying or otherwise providing information for the purposes of this
24 title; or

25 (v) Refused to submit to deposition, appear before, testify, or
26 answer a material question of the department, or board of industrial
27 insurance appeals, or produce a material document concerning his or her
28 provision of services under this title;

29 ~~((b))~~ (c) The criteria for conducting the examinations, including
30 guidelines for the appropriate treatment of injured workers during the
31 examination; and

32 ~~((e))~~ (d) The content of examination reports, including a
33 requirement that examination reports contain a signed statement
34 certifying that the report is a full and truthful representation of the
35 examiner's professional opinion with respect to the injured worker's
36 condition.

37 (2) Within the appropriate scope of practice, chiropractors
38 licensed under chapter 18.25 RCW may conduct special medical

1 examinations to determine permanent disabilities in consultation with
2 physicians licensed under chapter 18.57 or 18.71 RCW. The department,
3 in its discretion, may request that a special medical examination be
4 conducted by a single chiropractor if the department determines that
5 the sole issues involved in the examination are within the scope of
6 practice under chapter 18.25 RCW. However, nothing in this section
7 authorizes the use as evidence before the board of a chiropractor's
8 determination of the extent of a worker's permanent disability if the
9 determination is not requested by the department.

10 (3) The department must examine the credentials of providers
11 conducting medical examinations ordered under this title and must
12 monitor the quality and objectivity of the examinations and examination
13 reports obtained by the department and self-insured employers. The
14 department's rules must ensure that examinations ordered under this
15 title are performed only by qualified providers meeting department
16 standards.

17 (4) The department shall investigate the amount of examination fees
18 received by persons conducting (~~special~~) medical examinations (~~to~~
19 ~~determine permanent disabilities~~) under this title, including total
20 compensation received for examinations of department and self-insured
21 claimants, and establish compensation guidelines and compensation
22 reporting criteria.

23 ((+4)) (5) The department shall investigate the level of
24 compliance of self-insurers with the requirement of full reporting of
25 claims information to the department, particularly with respect to
26 medical examinations, and develop effective enforcement procedures or
27 recommendations for legislation if needed.

28 NEW SECTION. Sec. 7. RCW 51.32.112 is recodified as a section in
29 chapter 51.36 RCW.

30 NEW SECTION. Sec. 8. RCW 51.32.114 (Medical examination--
31 Department to monitor quality and objectivity) and 1988 c 114 s 3 are
32 each repealed.

33 NEW SECTION. Sec. 9. This act applies to all medical examinations
34 ordered under Title 51 RCW on or after the effective date of this act.

1 NEW SECTION. **Sec. 10.** If specific funding for the purposes of
2 this act, referencing this act by bill or chapter number, is not
3 provided by June 30, 2007, in the omnibus appropriations act, this act
4 is null and void.

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