
HOUSE BILL 1503

State of Washington 60th Legislature 2007 Regular Session

By Representatives Conway, McCoy, Wood, Campbell, Williams, Green, Kenney, Moeller, Ormsby and Chase

Read first time 01/22/2007. Referred to Committee on Commerce & Labor.

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 a new section; 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 or
10 the board of industrial insurance appeals, or before any court on
11 appeal from the board, any physician having theretofore examined or
12 treated the claimant may be required to testify fully regarding such
13 examination or treatment, and shall not be exempt from so testifying by
14 reason of the relation of physician to patient.

15 Nothing in this section shall be construed to allow ex parte
16 contact in violation of section 3 of this act.

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

1 (1) Except as provided in section 3 of this act, physicians
2 examining or attending injured workers under this title shall comply
3 with rules and regulations adopted by the director, and shall make such
4 reports as may be requested by the department or self-insurer upon the
5 condition or treatment of any such worker, or upon any other matters
6 concerning such workers in their care. Except under RCW 49.17.210
7 ~~((and))~~, 49.17.250, and section 3 of this act, all medical information
8 in the possession or control of any person and relevant to the
9 particular injury in the opinion of the department pertaining to any
10 worker whose injury or occupational disease is the basis of a claim
11 under this title shall be made available ~~((at any stage of the~~
12 ~~proceedings))~~ to the employer, the claimant's representative, and the
13 department upon request, and no person shall incur any legal liability
14 by reason of releasing such information.

15 (2) Any time that an examining or attending physician or licensed
16 advanced registered nurse practitioner is contacted by the employer, or
17 a representative of the employer, a written report must be generated by
18 the person or entity initiating contact which fully discloses all
19 subjects discussed and responses given. This report must be completed
20 within five days of the meeting, and a copy must be mailed to the
21 worker no later than the fifth day. Failure to comply with this
22 section constitutes a violation of RCW 51.48.080 and the penalty shall
23 be paid to the worker.

24 (3) In any circumstance in which an attorney, vocational counselor,
25 nurse case manager, or other representative of the employer seeks to
26 meet with an examining or attending physician or licensed advanced
27 registered nurse practitioner to discuss the worker's physical
28 capacities, medical treatment, permanent partial disability, ability to
29 work, or other issues pertaining to the claim, that person shall give
30 at least seven days' prior written notice to the worker or the worker's
31 designated representative. The worker and representative have the
32 right to attend and participate in the conference. The party
33 scheduling the meeting shall make reasonable efforts to coordinate the
34 scheduling of the appointment for the convenience of all parties.
35 Within five days of the completion of the meeting, the employer or
36 representative shall create a complete report of the meeting, including
37 all questions asked and information provided. A copy of this report

1 must be mailed to the worker or the worker's designated representative,
2 no later than the fifth day following the meeting.

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

5 (1) Once an appeal has been filed with the board, the department
6 and the employer, as well as the representatives of each, may not have
7 ex parte contact, to discuss the facts or issues in question in the
8 appeal, with any medical provider who has provided treatment to the
9 claimant unless written authorization for such contact is given by the
10 claimant or the claimant's representative. This also applies to
11 medical providers who examined the claimant for consultative purposes
12 at the request of either the claimant or a treating medical provider
13 unless the examination request was initiated by the department.

14 (2) Subsection (1) of this section does not apply if, in confirming
15 witnesses, the claimant does not name the medical provider for the
16 hearings.

17 (3) Once an appeal has been filed with the board, the claimant and
18 the representative for the claimant, if any, may not have ex parte
19 contact, to discuss the facts or issues in question in the appeal, with
20 any medical provider who examined the claimant for an independent
21 medical examination at the request of the department or the self-
22 insured employer unless they first receive written authorization for
23 such contact from the department or self-insured employer.

24 (4) Subsection (3) of this section does not apply if, in confirming
25 the names of their witnesses, the department and the self-insured
26 employer, if any, do not name the provider as a witness for the
27 hearings.

28 (5) This section does not limit the ability of the claimant, the
29 employer, or the department to contact medical providers for claims'
30 administration on issues not before the board.

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

33 (1) Any worker entitled to receive any benefits or claiming such
34 under this title shall, if requested by the department or self-insurer,
35 submit himself or herself for medical examination, ~~((at a time and from~~
36 ~~time to time, at a place reasonably convenient for the worker and as~~

1 ~~may be provided by the rules of the department. An injured worker,~~
2 ~~whether an alien or other injured worker, who is not residing in the~~
3 ~~United States at the time that a medical examination is requested may~~
4 ~~be required to submit to an examination at any location in the United~~
5 ~~States determined by the department or self-insurer)) as authorized in~~
6 RCW 51.36.070.

7 (2) If the worker refuses to submit to medical examination, or
8 obstructs the same, or, if any injured worker shall persist in
9 unsanitary or injurious practices which tend to imperil or retard his
10 or her recovery, or shall refuse to submit to such medical or surgical
11 treatment as is reasonably essential to his or her recovery or refuse
12 or obstruct evaluation or examination for the purpose of vocational
13 rehabilitation or does not cooperate in reasonable efforts at such
14 rehabilitation, the department or the self-insurer upon approval by the
15 department, with notice to the worker may suspend any further action on
16 any claim of such worker so long as such refusal, obstruction,
17 noncooperation, or practice continues and reduce, suspend, or deny any
18 compensation for such period: PROVIDED, That the department or the
19 self-insurer shall not suspend any further action on any claim of a
20 worker or reduce, suspend, or deny any compensation if a worker has
21 good cause for refusing to submit to or to obstruct any examination,
22 evaluation, treatment or practice requested by the department or
23 required under this section.

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

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

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

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

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

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

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

9 (2) Subject to subsection (3) of this section, whenever the
10 director or the self-insurer deems it necessary in order to resolve any
11 medical issue, the department or self-insurer may, at a time and from
12 time to time at a place reasonably convenient for the worker and as may
13 be provided by department rules, order a worker ((shall)) to submit to
14 examination ((by a physician or physicians selected by the director,
15 with the rendition of a report to the person ordering the
16 examination)). An injured worker, whether an alien or other injured
17 worker, who is not residing in the United States at the time that a
18 medical examination is ordered may be required to submit to an
19 examination at any location in the United States determined by the
20 department or self-insurer.

21 (3)(a) When ordering a medical examination under this section, the
22 department or self-insurer must first request in writing, with a copy
23 of the request submitted to the worker and the worker's representative,
24 if any, that the worker's attending physician or treating provider
25 conduct an examination and make a report on the medical issue in
26 question.

27 (b) If the medical issue is not resolved by the requested
28 examination and report, the department or self-insurer shall request
29 the attending physician or treating provider to make a consultation
30 referral to a provider approved by the director and licensed to
31 practice in the same field or specialty as the worker's attending
32 physician or treating provider, where appropriate. The consulting
33 provider shall conduct an examination and make a report on the medical
34 issue in question.

35 (c) If the worker's attending physician or treating provider is
36 unwilling or unable to conduct the examination or to make a
37 consultation referral, as requested by the department or self-insurer,

1 the department or self-insurer may order a medical examination
2 conducted by the provider who is listed next on the rotating list of
3 providers established and maintained by the department under RCW
4 51.32.112 (as recodified by this act), as appropriate, and who is
5 licensed to practice in the same field or specialty as the worker's
6 attending physician or treating provider.

7 (4)(a) A provider conducting a medical examination under this
8 section must submit a report to the department or self-insurer and, on
9 the same day that the report is submitted, submit a copy of the report
10 to the worker, the worker's representative, and the worker's attending
11 physician.

12 (b) If the department or self-insurer relies on the examination
13 report to deny, limit, or terminate benefits to a worker, the
14 department or self-insurer must give the workers' attending physician
15 no less than thirty days from the physician's receipt of the report to
16 provide a written response to the report.

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

20 (6) The director, in his or her discretion, may charge the cost of
21 such examination or examinations to the self-insurer or to the medical
22 aid fund as the case may be. The cost of said examination shall
23 include payment to the worker of reasonable expenses connected
24 therewith.

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

27 (1) The department must establish and maintain a rotating list of
28 providers approved to conduct examinations ordered under this title.

29 (2) The department shall (~~develop standards for~~) adopt rules
30 governing the conduct of (~~special~~) medical examinations (~~to~~
31 determine permanent disabilities)) ordered under this title, including,
32 but not limited to:

33 (a) The qualifications of persons conducting the examinations. To
34 conduct an examination, a provider must, at a minimum, be licensed to
35 practice at the time of the examination:

36 (i) In the same field or specialty as the worker's attending

1 physician or provider, where appropriate, with an active practice
2 involving direct patient care at least weekly in that field or
3 specialty; and

4 (ii) Medicine or surgery under chapter 18.71 RCW, osteopathic
5 medicine and surgery under chapter 18.57 RCW, podiatric medicine and
6 surgery under chapter 18.22 RCW, dentistry under chapter 18.30 RCW,
7 chiropractic under chapter 18.25 RCW, or psychology under chapter 18.83
8 RCW;

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

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

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

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

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

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

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

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

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

12 ~~((+3))~~ (4) The department must examine the credentials of
13 providers conducting medical examinations ordered under this title and
14 must monitor the quality and objectivity of the examinations and
15 examination reports obtained by the department and self-insured
16 employers. The department's rules must ensure that examinations
17 ordered under this title are performed only by qualified providers
18 meeting department standards.

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

25 ~~((+4))~~ (6) The department shall investigate the level of
26 compliance of self-insurers with the requirement of full reporting of
27 claims information to the department, particularly with respect to
28 medical examinations, and develop effective enforcement procedures or
29 recommendations for legislation if needed.

30 NEW SECTION. Sec. 7. RCW 51.32.112 is recodified as a section in
31 chapter 51.36 RCW.

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

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

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