FINAL BILL REPORT
SHB 1402

C 391 L 09
Synopsis as Enacted

Brief Description: Restricting contact with medical providers after appeals have been filed under industrial insurance.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Campbell, Conway, Moeller and Green).

House Committee on Commerce & Labor
Senate Committee on Labor, Commerce & Consumer Protection

Background:

Under the Industrial Insurance Act (Act), medical providers examining or attending injured workers must make reports requested by the Department of Labor and Industries (Department) or a self-insured employer about the condition or treatment of an injured worker, or about any other matters concerning an injured worker in their care. All medical information in the possession or control of any person relevant to a particular injury must be made available at any stage of proceedings to the employer, the worker's representative, and the Department. The Act states that no person incurs any legal liability for releasing this medical information.

The Act also provides that in all proceedings before the Department, the Board of Industrial Insurance Appeals (Board), or before any court, providers may be required to testify regarding examination or treatment of an injured worker and are not exempt from testifying based on the doctor-patient relationship.

When the Director of the Department (Director) or a self-insured employer deems it necessary to resolve a medical issue, an injured worker must submit to an independent medical examination by a physician selected by the Director.

Parties aggrieved by an order of the Department may appeal to the Board.

Summary:

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.

Restrictions are placed on contact by employers and the Department of Labor and Industries (Department) with attending and treating medical providers and on contact by workers with independent medical examination (IME) providers.

Employer Contact with Examining or Treating Provider. After receipt of a notice of appeal, an employer may not have contact to discuss the issues in question in the appeal with any medical provider who examined or treated the worker unless the worker provides written authorization for the contact.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the worker given the opportunity to fully participate; or
- by deposition.

Contact is permitted for the ongoing management of the claim, including communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

Worker Contact with Employer IME Provider. After receipt of a notice of appeal, the worker may not have contact to discuss the issues in question in the appeal with any IME provider who has examined the worker at the request of the employer unless the employer provides written authorization.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the Department and employer given the opportunity to fully participate; or
- by deposition.

Department Contact with Examining or Treating Provider. After an appeal is filed, a conference has been held to schedule hearings, and the worker has named witnesses, the Department may not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker and been named as a witness unless the worker provides written authorization.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the worker given the opportunity to fully participate; or
- by deposition.

Contact is permitted for the ongoing management of the claim, including communication regarding the worker's treatment needs and the provider's treatment plan, vocational and

return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

Worker Contact with Department IME Provider. After an appeal is filed, a conference has been held to schedule hearings, and the worker has named witnesses, the worker may not have contact to discuss the issues in question in the appeal with any medical provider who examined the worker at the request of the Department unless the Department provides written authorization.

Without written authorization, communication must be:

- in writing, sent contemporaneously to all parties with a distinct notice to the provider in bold type that any response must be in writing;
- in person, by telephone, or by video conference, at a mutually agreed to time and date, with the Department given the opportunity to fully participate; or
- by deposition.

Provisions Applicable to All Contacts. Written authorization for contact is valid only if given after the appeal is filed, and the authorization expires in 90 days. Written authorization is not required if the worker, employer, or the Department, as the case may be, fails to identify the provider as a witness. The provisions also apply to representatives of the employer, worker, and the Department.

Upon motion by either party, the industrial appeals judge assigned to the case may determine whether a party has made itself reasonably available to participate in an in-person, telephone, or video conference communication. If the judge finds that a party has not made itself reasonably available, the judge may determine appropriate remedies, including setting a date and time for contact and/or sanctioning a party.

A medical provider who discusses issues on appeal in violation of the provisions is not liable for the communication.

The Department and the Board of Industrial Insurance Appeals may adopt rules to implement the provisions, which apply to orders entered on or after the act's effective date.

Votes on Final Passage:

House	55	42	
Senate	29	18	(Senate amended)
House	56	41	(House concurred)

Effective: July 26, 2009