S-5388.2

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**SENATE BILL 6440**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators Stanford, Hunt, Keiser, McCoy, Das, and Conway

AN ACT Relating to industrial insurance medical examinations; amending RCW 51.32.110 and 51.36.070; and adding a new section to chapter 51.08 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 51.08 RCW to read as follows:

"New medical issue" means a medical issue not covered by a previous medical examination requested by the department or the self-insurer such as an issue regarding medical causation, medical treatment, work restrictions, or evaluating permanent partial disability.

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

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

(2) If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That ((~~the~~)) (a) The department or the self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section and (b) the department or self-insurer may not assess a no-show fee against the worker if the worker gives at least five business days' notice of the worker's intent not to attend the examination.

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

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

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

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

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

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

(1) Whenever the ((~~director~~)) department or the self-insurer deems it necessary in order to resolve ((~~any~~)) a new medical issue, a worker shall submit to examination by a physician or physicians selected by the ((~~director~~)) department, with the rendition of a report to the person ordering the examination, the attending physician, and the injured worker.

(a) Prior to ordering an examination, the department must first notify the attending physician in writing of the worker's right to a consultation with a specialist to resolve any issues regarding medical treatment. If the attending physician chooses to not facilitate the consultation or is unable to identify a consulting specialist within fourteen days of the receipt of notice, then an examination may be ordered.

(b) The total number of examinations per claim is limited as follows:

(i) One examination prior to an order under RCW 51.52.050 or 51.52.060, allowing or denying a new claim, becoming final and binding.

(ii) One examination for a permanent disability evaluation. Another permanent disability evaluation examination is allowed following each time a claim is reopened under RCW 51.32.160 or if the department or self-insurer authorizes further curative or rehabilitative treatment.

(iii) One examination following the filing of any application to reopen a claim under RCW 51.32.160 and prior to a final order under RCW 51.52.050 or 51.52.060 allowing or denying reopening of the claim.

(iv) Additional examinations may be performed after a final allowance order or final order to reopen a claim and prior to any permanent disability evaluation but no more than one examination per each new medical issue as defined in section 1 of this act.

(c) A worker has the right to record either the audio, video, or both, of all examinations ordered under this section, RCW 51.32.110, or by the board of industrial insurance appeals. The worker must pay the costs of recording the examination and must provide one copy, upon request, to the department or self-insured employer within fourteen days of receiving the request, but in no case prior to the issuance of a written report of examination. The worker must take reasonable steps to ensure the recording equipment does not interfere with the examination.

(d) The worker has the right to have one person, of the worker's choosing, present to observe all examinations ordered under this section, RCW 51.32.110, or by the board of industrial insurance appeals. The observer must be unobtrusive and not interfere with the exam.

(e) The examination must be at a place reasonably convenient to the injured worker. For purposes of this subsection, "reasonably convenient" means at a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. The department and the self-insured employer may not use the lack of available specialists to require workers to travel beyond what is reasonably convenient.

(f) There may be more than one examiner, but each examiner must have a different board certification. The examination may take place at two or more different times or locations, but all examinations must be completed within three weeks of the first examination. However, the department may extend the time period for completion of all the examinations for documented extraordinary circumstances.

(g)(i) Self-insured employers must send in writing to the department, with a copy to the injured worker, all requests for the scheduling of such examinations.

(ii) The department must send a written notice of the examination to the injured worker no later than fifteen days prior to the examination.

(h) When the department schedules an examination at the request of a self-insured employer, all charges for such examination must be paid by the self-insured employer pursuant to the fee schedules set by the department and may not pay any amount in excess of the fee schedule.

(2) The department or self-insurer, as the case may be, shall provide the physician performing an examination with all relevant medical records from the worker's claim file. ((~~The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be.~~)) The cost of said examination shall include payment to the worker of reasonable expenses connected therewith.

(3) Examiners shall make themselves reasonably available for testimony before the board on industrial insurance appeals within one hundred miles of the place where the examination occurred.

(4) Examiners shall retain copies of all dictation or other audiorecords of the examination, which were caused to be created by the examiner and shall retain copies of all drafts, notes, emails, and communications with third-party administrators regarding their exams and reports until the claim or claims on which the examination was conducted are closed and the orders closing the claim or claims are final and binding. Examiners must produce electronic copies of such recordings and records to injured workers or their representatives upon request at no charge. If physical copies are requested, examiners may charge for the reproduction and copying in an amount not to exceed the department's fee schedule.

(5) For purposes of this section, "examination" means a physical or mental examination by a medical care provider licensed to practice medicine, osteopathy, podiatry, chiropractic, dentistry, psychology, or optometry at the request of the department or self-insured employer or by order of the board of industrial insurance appeals.

(6) All examinations shall result in a written report, which shall be sent to the department within fourteen days of the examination. Copies of all such reports shall be mailed to the attending physician by the department or the self-insured with a request for a response within thirty days; except for psychiatric exams.

(7) The department may adopt rules to implement this section.

(8) This section applies prospectively to all claims regardless of the date of injury.

**--- END ---**