**6440-S.E AMH LAWS H5175.1 - NOT FOR FLOOR USE**

**ESSB 6440** - H COMM AMD

By Committee on Labor & Workplace Standards

**ADOPTED 03/04/2020**

Strike everything after the enacting clause and insert the following:

"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, ((~~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 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)(a) Whenever the ((~~director~~)) department or the self-insurer deems it necessary in order to ((~~resolve any~~)) (i) make a decision regarding claim allowance or reopening, (ii) resolve a new medical issue, an appeal, or case progress, or (iii) evaluate the worker's permanent disability or work restriction, 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.

(b) The examination must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination. 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 must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in that community.

(2) The department or self-insurer 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) 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, or psychiatry at the request of the department or self-insured employer or by order of the board of industrial insurance appeals.

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

NEW SECTION. **Sec.**  (1) An independent medical examination work group is established within the department of labor and industries, with members as provided in this subsection.

(a) The speaker of the house of representatives shall appoint two members from the house of representatives, with one member appointed from each of the two largest caucuses of the house of representatives;

(b) The president of the senate shall appoint two members from the senate, with one member appointed from each of the two largest caucuses of the senate;

(c) The department of labor and industries shall appoint one business representative representing employers participating in the state fund;

(d) The department of labor and industries shall appoint one business representative representing employers who are self-insured for purposes of workers' compensation insurance;

(e) The department of labor and industries shall appoint two labor representatives;

(f) The department of labor and industries shall appoint one representative of both an association representing physicians who perform examinations for purposes of workers' compensation insurance and the panel companies that work with them; and

(g) The department of labor and industries shall appoint one attorney who represents injured workers.

(2) The work group must:

(a) Develop strategies for reducing the number of medical examinations per claim while considering claim duration and medical complexity;

(b) Develop strategies for improving access to medical records, including records and reports created during the course of or pursuant to an examination;

(c) Consider whether the department of labor and industries should do all the scheduling of independent medical examinations;

(d) Consider the circumstances for which independent medical examiners should be randomly selected or specified;

(e) Consider workers' rights in the independent medical examination process including attendance, specialist consultations, the audio or video recording of examinations, and the distance and location of examinations;

(f) Recommend changes to improve the efficiency of the independent medical examination process; and

(g) Identify barriers to increasing the supply of in-state physicians willing to do independent medical examinations in the workers' compensation system.

(3) The department of labor and industries must report its findings and recommendations to the legislature by December 11, 2020.

(4) This section expires December 31, 2020.

NEW SECTION. **Sec.**  A new section is added to chapter 51.36 RCW to read as follows:

(1) The department may adopt rules to implement section 3 of this act.

(2) The department must adopt rules, policies, and processes governing the use of telemedicine for independent medical examinations under section 3 of this act. Development of rules may include a pilot project. Consideration should be given to all available research regarding the use of telemedicine for independent medical examinations.

NEW SECTION. **Sec.**  Sections 1 through 3 of this act take effect January 1, 2021."

Correct the title.

EFFECT: Clarifies language regarding who is prohibited from assessing no-show fees against workers (reference to "self-insurer" is removed since only the Department is authorized to impose no-show fees).

Specifies that the Department must determine if telemedicine is appropriate, in order to use telemedicine as an alternative to an independent medical examination (IME) at a place reasonably convenient to the worker.

Specifies that the Department must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in the community that is reasonably convenient for the worker.

Requires the Department to adopt rules, policies, and processes regarding the use of telemedicine. Specifies the rules may include a pilot project and consideration should be given to all available research regarding the use of telemedicine for IMEs.

Delays the effective date of all provisions of the bill except for provisions regarding the work group and rule making.