
SUBSTITUTE SENATE BILL 6440

State of Washington

66th Legislature

2020 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Stanford, Hunt, Keiser, McCoy, Das, and Conway)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to industrial insurance medical examinations;
2 amending RCW 51.32.110 and 51.36.070; adding a new section to chapter
3 51.08 RCW; creating a new section; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08
6 RCW to read as follows:

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

12 **Sec. 2.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to
13 read as follows:

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

1 States at the time that a medical examination is requested may be
2 required to submit to an examination at any location in the United
3 States determined by the department or self-insurer.

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

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
33 equal to his or her usual wages for the time lost from work while
34 attending 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
37 the time lost from work while attending the medical examination.

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

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

3 (1) Whenever the ((director)) department or the self-insurer
4 deems it necessary in order to make a decision regarding claim
5 allowance or reopening, to resolve ((any)) a new medical issue, to
6 appeal a stalled treatment plan, or to evaluate the worker's
7 permanent disability or work restriction, a worker shall submit to
8 examination by a physician or physicians selected by the ((director))
9 department, with the rendition of a report to the person ordering the
10 examination, the attending physician, and the injured worker.

11 (a) Prior to ordering an examination to resolve a stalled
12 treatment plan, the department must first notify the attending
13 physician in writing of the worker's right to a consultation with a
14 specialist to resolve any issues regarding medical treatment. If the
15 attending physician chooses to not facilitate the consultation or is
16 unable to identify a consulting specialist within fourteen days of
17 the receipt of notice, then an examination may be ordered. If a
18 worker covered by a self-insured employer requests the department to
19 review an order for an examination, the examination schedule is
20 paused until the department completes the review.

21 (b) The department or self-insured employer shall consider the
22 total number of examinations per claim so that they are limited.

23 (c) A worker has the right to record either the audio, video, or
24 both, of all examinations ordered under this section, RCW 51.32.110,
25 or by the board of industrial insurance appeals if the worker
26 notifies the physician during the course of scheduling the
27 examination. If the physician does not consent to be recorded, the
28 physician must notify the worker and the party requesting the
29 examination and the department or self-insured employer must schedule
30 the examination with a different physician. The worker must pay the
31 costs of recording the examination and must provide one copy, upon
32 request, to the department or self-insured employer within fourteen
33 days of receiving the request, but in no case prior to the issuance
34 of a written report of examination. The worker must take reasonable
35 steps to ensure the recording equipment does not interfere with the
36 examination.

37 (d) The examination must be at a place reasonably convenient to
38 the injured worker, or alternatively utilize telemedicine. For
39 purposes of this subsection, "reasonably convenient" means at a place

1 where residents in the injured worker's community would normally
2 travel to seek medical care for the same specialty as the examiner.

3 (e) There may be more than one examiner. The examination may take
4 place at two or more different times or locations, but all
5 examinations must be completed within three weeks of the first
6 examination. However, the department may extend the time period for
7 completion of all the examinations for documented extraordinary
8 circumstances.

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

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

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

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

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

38 (6) All examinations shall result in a written report, which
39 shall be sent to the department within fourteen days of the

1 examination. Copies of all such reports shall be mailed to the
2 attending physician by the department or the self-insurer.

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

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

6 NEW SECTION. Sec. 4. (1) An independent medical examination
7 work group is established within the department of labor and
8 industries, with members as provided in this subsection.

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

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

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

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

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

24 (f) The department of labor and industries shall appoint a
25 representative of an association representing physicians who perform
26 examinations for purposes of workers' compensation insurance; and

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

29 (2) The work group must:

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

33 (b) Develop strategies for improving access to medical records;

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

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

38 (e) Recommend changes to improve the efficiency of the
39 independent medical examination process; and

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

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

6 (4) This section expires December 31, 2020.

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