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**SUBSTITUTE SENATE BILL 5102**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Stanford, Conway, Das, Keiser, and Kuderer)

AN ACT Relating to industrial insurance medical examinations; amending RCW 51.36.070 and 51.32.195; adding a new section to chapter 51.52 RCW; and creating a new section.

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

**Sec.**  RCW 51.36.070 and 2020 c 213 s 3 are each amended to read as follows:

(1)(a) Whenever the department or the self-insurer deems it necessary in order to (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 department, with the rendition of a report to the person ordering the examination, the attending physician, and the injured worker.

(b) In addition to the criteria specified in (a) of this subsection, the department or self-insurer may order an examination or request the attending provider to arrange a consultation in the event of complication, controversy, or dispute over the treatment aspects of any claim.

(i) The department must specify the amount of time, after a final allowance order, before such an examination may be scheduled.

(ii) The department must specify the amount of time since the last examination took place pursuant to these rules before another examination may be scheduled.

(iii) The department must adopt additional rules necessary to prevent duplicate examinations that address whether to authorize necessary and proper medical treatment.

(c) 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.

(d) 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 after completion of further treatment if the department or self-insurer authorizes 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.

(v) The department must adopt rules to permit rare exceptions to the limitations identified in this subsection (1)(d) in the case of extraordinary circumstances, such as the death or disability of an examiner prior to completion of the report, or irretrievable loss of examination data.

(e) In claims involving self-insured employers:

(i) Notices of examinations scheduled pursuant to this section must be mailed to the injured worker no later than 28 days prior to the examination.

(ii) Where a timely dispute of the examination has been filed by an injured worker, the department shall adjudicate whether or not the injured worker should be compelled to attend.

(iii) The department shall adopt rules governing what constitutes a timely dispute and under what circumstances it may delay such examinations to complete its investigation.

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

(4)(a) 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 14 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.

(b) Any material alteration of the recording by the injured worker or done on their behalf that results in the receipt of benefits may be subject to repayment of those benefits pursuant to RCW 51.32.240.

(c) The worker has the right to have one person, at least 21 years of age, of the worker's choosing, but not the worker's legal representative, 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.

(d) All such recordings shall be kept confidential pursuant to RCW 51.28.070.

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

**Sec.**  RCW 51.32.195 and 1987 c 290 s 1 are each amended to read as follows:

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by ((~~certified~~)) mail, the self-insurer shall electronically submit all information in its possession concerning a claim within ((~~ten~~)) five working days from the date of receipt of such ((~~certified~~)) notice.

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

In proceedings before the board, each party shall be limited to presenting the testimony of one medical expert witness of the same medical specialty, except the attending physician, unless good cause is shown by the presenting party that a second medical specialist is necessary to assist the trier of fact to understand the evidence.

NEW SECTION. **Sec.**  Sections 1 and 2 of this act apply prospectively to all claims regardless of the date of injury.

**--- END ---**