
SENATE BILL 5622

State of Washington

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By Senators Franklin, Thibaudeau, Shin, Regala, Kohl-Welles, Keiser and Kline

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1 AN ACT Relating to medical examinations under the industrial
2 insurance system; amending RCW 51.32.110, 51.36.070, and 51.32.112;
3 adding a new section to chapter 51.36 RCW; creating a new section;
4 recodifying RCW 51.32.112; and repealing RCW 51.32.114.

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

6 **Sec. 1.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
7 as follows:

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

18 (2) If the worker refuses to submit to medical examination, or
19 obstructs the same, or, if any injured worker shall persist in

1 unsanitary or injurious practices which tend to imperil or retard his
2 or her recovery, or shall refuse to submit to such medical or surgical
3 treatment as is reasonably essential to his or her recovery or refuse
4 or obstruct evaluation or examination for the purpose of vocational
5 rehabilitation or does not cooperate in reasonable efforts at such
6 rehabilitation, the department or the self-insurer upon approval by the
7 department, with notice to the worker may suspend any further action on
8 any claim of such worker so long as such refusal, obstruction,
9 noncooperation, or practice continues and reduce, suspend, or deny any
10 compensation for such period: PROVIDED, That the department or the
11 self-insurer shall not suspend any further action on any claim of a
12 worker or reduce, suspend, or deny any compensation if a worker has
13 good cause for refusing to submit to or to obstruct any examination,
14 evaluation, treatment or practice requested by the department or
15 required under this section.

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

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

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

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

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

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

34 (1) When a medical examination is conducted under this title:

35 (a) The examination must be conducted at a medical facility
36 suitable for the examination and reasonably convenient for the worker;

1 (b) The examination must be conducted with due regard and respect
2 for the privacy and dignity of the injured worker and for the safety
3 and convenient access of the worker; and

4 (c) The worker may be accompanied by a person who may observe the
5 examination but not interfere with or obstruct the examination. The
6 worker or person accompanying the worker may, at the worker's expense,
7 make an audio and video recording of the examination, if the recording
8 is made in an unobtrusive manner. This section does not limit the
9 department or self-insurer's obligation to provide necessary
10 interpreter services.

11 (2) Subject to subsection (3) of this section, whenever the
12 director or the self-insurer deems it necessary in order to resolve any
13 medical issue, the department or self-insurer may, at a time and from
14 time to time and as may be provided by department rules, order a worker
15 ((shall)) to submit to examination by a ((physician or physicians
16 selected)) provider or providers approved by the director((, with the
17 rendition of a report to the person ordering the examination)) and
18 competent to examine the worker and evaluate the injury or disease from
19 which the worker suffers. An injured worker who is not residing in the
20 United States at the time that a medical examination is ordered may be
21 required to submit to an examination at a suitable medical facility in
22 the United States as determined by the department or self-insurer.

23 (3)(a) When ordering a medical examination, the department or self-
24 insurer must first request in writing, with a copy of the request
25 submitted to the worker and the worker's representative, if any, that
26 the worker's attending physician or other treating provider conduct an
27 examination and make a report on the medical issue in question. The
28 attending physician or treating provider may, without prior
29 authorization from the department or self-insurer, make a consultation
30 referral to a provider licensed to practice in the same field or
31 specialty as the attending physician or treating provider, as relevant.
32 The consultant shall conduct the examination and make a report to the
33 provider requesting the examination.

34 (b) If the medical issue is not resolved by the requested
35 examination and report, the department or self-insurer may request the
36 attending physician or treating provider to make a consultation
37 referral to a provider approved by the director and licensed to

1 practice in the same field or specialty as the worker's attending
2 physician or treating provider, as relevant.

3 (c) If the worker's attending physician or treating provider is
4 unwilling or unable to conduct the examination or make a consultation
5 referral, as requested by the department or self-insurer, the
6 department or self-insurer may order a medical examination by a
7 provider or providers agreed upon by the worker and the department or
8 self-insurer.

9 (d) To resolve a material dispute regarding treatment or diagnosis
10 between the attending physician or treating provider and a consulting
11 provider, the department or self-insurer may order a medical
12 examination to be conducted by a provider that the injured worker
13 chooses from a list of at least five providers submitted by the
14 department or self-insurer to the worker.

15 (4)(a) A provider conducting a medical examination ordered under
16 this section must submit a report to the department or self-insurer as
17 the case may be and, on the same day that the report is submitted,
18 submit a copy of the report to the worker, the worker's representative,
19 if any, the worker's attending physician, and the worker's employer.

20 (b) If the department or self-insurer relies on the examination
21 report to deny, limit, or terminate benefits to a worker, the
22 department or self-insurer must give the workers' attending physician
23 no less than thirty days from the physician's receipt of the report to
24 provide a written response to the report.

25 (5) In resolving a medical issue under this title, the department
26 or self-insurer must:

27 (a) Base the decision only on medical opinion that is founded on
28 factual data supported by the evidence; and

29 (b) Give special consideration to the medical opinion of the
30 worker's attending physician or treating provider rather than to the
31 opinion of a provider who has examined, but not treated, the worker.

32 (6) The department or self-insurer shall provide the physician
33 performing an examination with all relevant medical records from the
34 worker's claim file.

35 (7) The director, in his or her discretion, may charge the cost of
36 (~~such~~) a medical examination or examinations ordered under this title
37 to the self-insurer or to the medical aid fund as the case may be. The

1 cost of (~~said~~) the examination shall include payment to the worker of
2 reasonable expenses connected (~~therewith~~) with the examination as
3 provided in RCW 51.32.110.

4 (8) For the purposes of this section, "medical issue" includes all
5 questions within the expertise of the provider, including but not
6 limited to cause of the injury or disease, establishment of diagnoses,
7 the course of or need for treatment, the condition of the worker and
8 whether the condition is fixed and stable, limitations on return-to-
9 work activities, review of job analyses, and assessment of permanent
10 disability.

11 **Sec. 3.** RCW 51.32.112 and 1993 c 515 s 4 are each amended to read
12 as follows:

13 (1) The department shall (~~develop standards for~~) adopt rules
14 governing the conduct of (~~special~~) medical examinations (~~to~~
15 ~~determine permanent disabilities~~) ordered under this title, including,
16 but not limited to:

17 (a) The qualifications of persons conducting the examinations. To
18 conduct an examination, a provider must, at a minimum, be licensed to
19 practice at the time of the examination:

20 (i) In the same field or specialty as the worker's attending
21 physician or treating provider, as relevant, with an active practice
22 involving direct patient care at least weekly in that field or
23 specialty. This requirement may be waived by mutual agreement between
24 the worker and the department or self-insurer; and

25 (ii) Medicine or surgery under chapter 18.71 RCW, osteopathic
26 medicine and surgery under chapter 18.57 RCW, podiatric medicine and
27 surgery under chapter 18.22 RCW, dentistry under chapter 18.30 RCW,
28 chiropractic under chapter 18.25 RCW, or psychology under chapter 18.83
29 RCW;

30 (b) The criteria for removing examiners from the list of approved
31 examiners, including but not limited to the department determining
32 after reasonable investigation that the provider:

33 (i) Committed professional or other misconduct, including a
34 violation of RCW 51.48.280, or demonstrated incompetency in connection
35 with providing medical examinations under this title;

36 (ii) Exceeded the limits of his or her professional competence in

1 conducting medical examinations or made materially false statements
2 regarding his or her qualifications in his or her application as an
3 examiner;

4 (iii) Failed to transmit copies of medical reports, or failed to
5 submit full and truthful medical reports of his or her findings, as
6 required by this title;

7 (iv) Knowingly made a false statement or representation as to a
8 material fact in any medical report made under this title or in
9 testifying or otherwise providing information for the purposes of this
10 title; or

11 (v) Refused to appear before, testify, submit to deposition, or
12 answer a material question of the department, or board of industrial
13 insurance appeals, or produce a material document concerning his or her
14 provision of services under this title;

15 ~~((b))~~ (c) The criteria for conducting the examinations, including
16 guidelines for the appropriate treatment of injured workers during the
17 examination; and

18 ~~((e))~~ (d) The content of examination reports, including a
19 requirement that examination reports contain a signed statement
20 certifying that the report is a full and truthful representation of the
21 examiner's professional opinion with respect to the injured worker's
22 condition.

23 (2) Within the appropriate scope of practice, chiropractors
24 licensed under chapter 18.25 RCW may conduct special medical
25 examinations to determine permanent disabilities under RCW 51.32.055 in
26 consultation with physicians licensed under chapter 18.57 or 18.71 RCW.
27 The department, in its discretion, may request that a special medical
28 examination be conducted by a single chiropractor if the department
29 determines that the sole issues involved in the examination are within
30 the scope of practice under chapter 18.25 RCW. However, nothing in
31 this section authorizes the use as evidence before the board of a
32 chiropractor's determination of the extent of a worker's permanent
33 disability if the determination is not requested by the department.

34 (3) The department must examine the credentials of providers
35 conducting medical examinations ordered under this title and must
36 monitor the quality and objectivity of the examinations and examination
37 reports obtained by the department and self-insured employers. The

1 department's rules must ensure that examinations ordered under this
2 title are performed only by qualified providers meeting department
3 standards.

4 (4) The department shall investigate the amount of examination fees
5 received by persons conducting (~~special~~) medical examinations (~~to~~
6 ~~determine permanent disabilities~~) ordered under this title, including
7 total compensation received for examinations of department and self-
8 insured claimants, and establish compensation guidelines and
9 compensation reporting criteria.

10 (~~(4)~~) (5) The department shall investigate the level of
11 compliance of self-insurers with the requirement of full reporting of
12 claims information to the department, particularly with respect to
13 medical examinations, and develop effective enforcement procedures or
14 recommendations for legislation if needed.

15 NEW SECTION. Sec. 4. RCW 51.32.112 is recodified as a new section
16 in chapter 51.36 RCW.

17 NEW SECTION. Sec. 5. RCW 51.32.114 (Medical examination--
18 Department to monitor quality and objectivity) and 1988 c 114 s 3 are
19 each repealed.

20 NEW SECTION. Sec. 6. This act applies to all medical examinations
21 ordered under Title 51 RCW on or after the effective date of this act.

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