

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1402

Chapter 391, Laws of 2009

61st Legislature
2009 Regular Session

INDUSTRIAL INSURANCE APPEALS--CONTACT WITH PROVIDERS

EFFECTIVE DATE: 07/26/09

Passed by the House April 18, 2009
Yeas 56 Nays 41

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 8, 2009
Yeas 29 Nays 18

BRAD OWEN

President of the Senate

Approved May 7, 2009, 2:24 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1402** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 8, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1402

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Williams, Campbell, Conway, Moeller, and Green)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to contact with medical providers after appeals
2 have been filed under industrial insurance; adding a new section to
3 chapter 51.52 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.52 RCW
6 to read as follows:

7 (1)(a) Except as provided in (b) through (d) of this subsection,
8 after receipt of the notice of an appeal that has been filed under RCW
9 51.52.060(2), the employer and its representatives shall not have
10 contact to discuss the issues in question in the appeal with any
11 medical provider who has examined or treated the worker at the request
12 of the worker or treating medical provider, unless written
13 authorization for contact is given by the worker or the worker's
14 representative. Written authorization is only valid if given after the
15 date that the appeal is filed and expires ninety days after it is
16 signed.

17 (b) Contact is permitted as necessary for the ongoing management of
18 the claim, including but not limited to communication regarding the
19 worker's treatment needs and the provider's treatment plan, vocational

1 and return-to-work issues and assistance, and certification of the
2 worker's inability to work, unless these issues are in question in the
3 appeal.

4 (c) If the employer or its representatives wish to communicate with
5 the examining or treating medical providers concerning the issues in
6 question in the appeal, and no written authorization from the worker or
7 the worker's representative has been obtained, the communication must
8 either be:

9 (i) In writing, including by e-mail, sent contemporaneously to all
10 parties with a distinct notice to the provider that any response must
11 be in writing, including by e-mail;

12 (ii) In person, by telephone, or by videoconference, at a date and
13 time mutually agreed to by all parties, with the worker or the worker's
14 representative given the opportunity to fully participate; or

15 (iii) Pursuant to a properly scheduled and noted deposition.

16 (d) Written authorization is not required if the worker fails to
17 identify or confirm the examining or treating medical provider as a
18 witness as required by the board.

19 (2)(a) Except as provided in (b) and (c) of this subsection, after
20 receipt of the notice of an appeal under RCW 51.52.060(2), the worker
21 and the representative for the worker, if any, shall not have contact
22 to discuss the issues in question in the appeal with any medical
23 provider who has examined the worker at the request of the employer
24 pursuant to RCW 51.36.070, unless written authorization for contact is
25 given by the employer or its representative. Written authorization is
26 only valid if given after the date that the appeal is filed and expires
27 ninety days after it is signed.

28 (b) If the worker or the worker's representative wishes to
29 communicate with a medical provider who has examined the worker
30 pursuant to RCW 51.36.070, and no written authorization from the
31 employer or its representative has been obtained, the communication
32 must either be:

33 (i) In writing, including by e-mail, sent contemporaneously to all
34 parties with a distinct notice to the provider that any response must
35 be in writing, including by e-mail;

36 (ii) In person, by telephone, or by videoconference, at a date and
37 time mutually agreed to by all parties, with the department, employer,

1 and their representatives given the opportunity to fully participate;
2 or

3 (iii) Pursuant to a properly scheduled and noted deposition.

4 (c) Written authorization is not required if the employer fails to
5 identify or confirm the examining medical provider as a witness as
6 required by the board.

7 (3) Subsections (1) and (2) of this section do not apply to the
8 department.

9 (a) Except as provided in (b) through (d) of this subsection, after
10 an appeal has been filed under RCW 51.52.060(2), a conference has been
11 held to schedule hearings, and the worker has named his or her
12 witnesses, the department and its representatives shall not have
13 contact to discuss the issues in question in the appeal with any
14 medical provider who has examined or treated the worker at the request
15 of the worker or treating medical provider and has been named as a
16 witness by the worker or their representative unless written
17 authorization for contact is given by the worker or the worker's
18 representative. Written authorization is only valid if given after the
19 date that the appeal is filed and expires ninety days after it is
20 signed.

21 (b) Contact is permitted as necessary for the ongoing management of
22 the claim, including but not limited to communication regarding the
23 worker's treatment needs and the provider's treatment plan, vocational
24 and return-to-work issues and assistance, and certification of the
25 worker's inability to work, unless these issues are in question in the
26 appeal.

27 (c) If the department or its representatives wish to communicate
28 with the examining or treating medical providers concerning the issues
29 in question in the appeal, and no written authorization from the worker
30 or the worker's representative has been obtained, the communication
31 must either be:

32 (i) In writing, including by e-mail, sent contemporaneously to all
33 parties with a distinct notice to the provider that any response must
34 be in writing, including by e-mail;

35 (ii) In person, by telephone, or by videoconference, at a date and
36 time mutually agreed to by all parties, with the worker or the worker's
37 representative given the opportunity to fully participate; or

38 (iii) Pursuant to a properly scheduled and noted deposition.

1 (d) Written authorization is not required if the worker fails to
2 identify or confirm the examining or treating medical provider as a
3 witness as required by the board.

4 (4)(a) Except as provided in (b) and (c) of this subsection, after
5 an appeal has been filed under RCW 51.52.060(2), a conference has been
6 held to schedule hearings, and the worker has named his or her
7 witnesses, the worker and the representative for the worker, if any,
8 shall not have contact to discuss the issues in question in the appeal
9 with any medical provider who has examined the worker at the request of
10 the department pursuant to RCW 51.36.070, unless written authorization
11 for contact is given by the department or its representatives. Written
12 authorization is only valid if given after the date that the appeal is
13 filed and expires ninety days after it is signed.

14 (b) If the worker or the worker's representative wishes to
15 communicate with a medical provider who has examined the worker
16 pursuant to RCW 51.36.070, and no written authorization from the
17 department or its representative has been obtained, the communication
18 must either be:

19 (i) In writing, including by e-mail, sent contemporaneously to all
20 parties with a distinct notice to the provider that any response must
21 be in writing, including by e-mail;

22 (ii) In person, by telephone, or by videoconference, at a date and
23 time mutually agreed to by all parties, with the department or its
24 representatives given the opportunity to fully participate; or

25 (iii) Pursuant to a properly scheduled and noted deposition.

26 (c) Written authorization is not required if the department fails
27 to identify or confirm the examining medical provider as a witness as
28 required by the board.

29 (5) Upon motion by either party, the industrial appeals judge
30 assigned to the case may determine whether a party has made itself
31 reasonably available to participate in an in-person, telephone, or
32 videoconference communication as provided in subsections (1)(c)(ii),
33 (2)(b)(ii), (3)(c)(ii), and (4)(b)(ii) of this section. If the
34 industrial appeals judge determines that a party has not made itself
35 reasonably available, the judge may determine appropriate remedies
36 including but not limited to setting a date and time for the contact
37 being requested by a party, sanctioning the party who has not
38 reasonably made itself available, or both.

1 (6) This section only applies to issues set forth in a notice of
2 appeal under RCW 51.52.060(2).

3 (7) This section does not limit the reporting requirements under
4 RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of
5 appeal.

6 (8) The department and board may adopt rules as necessary to
7 implement the provisions of this section.

8 (9) A medical provider who discusses issues on appeal with the
9 department or with any employer or worker or representative of any
10 employer or worker in violation of this section shall not be held
11 liable for such communication.

12 NEW SECTION. **Sec. 2.** This act applies to orders entered on or
13 after the effective date of this section.

Passed by the House April 18, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor May 7, 2009.
Filed in Office of Secretary of State May 8, 2009.