S-6088.2

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**SUBSTITUTE SENATE BILL 6440**

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**State of Washington 66th Legislature 2020 Regular Session**

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

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

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

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 or self-insurer 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) Whenever the ((~~director~~)) department or the self-insurer deems it necessary in order to make a decision regarding claim allowance or reopening, to resolve ((~~any~~)) a new medical issue, to appeal a stalled treatment plan, or to 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.

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

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

(c) 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 if the worker notifies the physician during the course of scheduling the examination. If the physician does not consent to be recorded, the physician must notify the worker and the party requesting the examination and the department or self-insured employer must schedule the examination with a different physician. 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 fourteen 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.

(d) The examination must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine. 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.

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

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

(2) The department or self-insurer, as the case may be, 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) Examiners shall make themselves reasonably available for testimony before the board on industrial insurance appeals within one hundred miles of the place where the examination occurred.

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

(5) 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.

(6) All examinations shall result in a written report, which shall be sent to the department within fourteen days of the examination. Copies of all such reports shall be mailed to the attending physician by the department or the self-insurer.

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

(8) 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 a representative of an association representing physicians who perform examinations for purposes of workers' compensation insurance; and

(g) The department of labor and industries shall appoint an 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;

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

(f) 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.

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