

ESSB 6440 - H COMM AMD

By Committee on Labor & Workplace Standards

ADOPTED 03/04/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08
4 RCW to read as follows:

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

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

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

22 (2) If the worker refuses to submit to medical examination, or
23 obstructs the same, or, if any injured worker shall persist in
24 unsanitary or injurious practices which tend to imperil or retard his
25 or her recovery, or shall refuse to submit to such medical or
26 surgical treatment as is reasonably essential to his or her recovery
27 or refuse or obstruct evaluation or examination for the purpose of
28 vocational rehabilitation or does not cooperate in reasonable efforts
29 at such rehabilitation, the department or the self-insurer upon
30 approval by the department, with notice to the worker may suspend any
31 further action on any claim of such worker so long as such refusal,

1 obstruction, noncooperation, or practice continues and reduce,
2 suspend, or deny any compensation for such period: PROVIDED, That
3 (~~the~~) (a) The department or the self-insurer shall not suspend any
4 further action on any claim of a worker or reduce, suspend, or deny
5 any compensation if a worker has good cause for refusing to submit to
6 or to obstruct any examination, evaluation, treatment or practice
7 requested by the department or required under this section and (b)
8 the department may not assess a no-show fee against the worker if the
9 worker gives at least five business days' notice of the worker's
10 intent not to attend the examination.

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

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

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

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

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

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

29 (1) (a) Whenever the (~~director~~) department or the self-insurer
30 deems it necessary in order to (~~resolve any~~) (i) make a decision
31 regarding claim allowance or reopening, (ii) resolve a new medical
32 issue, an appeal, or case progress, or (iii) evaluate the worker's
33 permanent disability or work restriction, a worker shall submit to
34 examination by a physician or physicians selected by the (~~director~~)
35 department, with the rendition of a report to the person ordering the
36 examination, the attending physician, and the injured worker.

37 (b) The examination must be at a place reasonably convenient to
38 the injured worker, or alternatively utilize telemedicine if the
39 department determines telemedicine is appropriate for the

1 examination. For purposes of this subsection, "reasonably convenient"
2 means at a place where residents in the injured worker's community
3 would normally travel to seek medical care for the same specialty as
4 the examiner. The department must address in rule how to accommodate
5 the injured worker if no approved medical examiner in the specialty
6 needed is available in that community.

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

14 (3) For purposes of this section, "examination" means a physical
15 or mental examination by a medical care provider licensed to practice
16 medicine, osteopathy, podiatry, chiropractic, dentistry, or
17 psychiatry at the request of the department or self-insured employer
18 or by order of the board of industrial insurance appeals.

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

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

24 (a) The speaker of the house of representatives shall appoint two
25 members from the house of representatives, with one member appointed
26 from each of the two largest caucuses of the house of
27 representatives;

28 (b) The president of the senate shall appoint two members from
29 the senate, with one member appointed from each of the two largest
30 caucuses of the senate;

31 (c) The department of labor and industries shall appoint one
32 business representative representing employers participating in the
33 state fund;

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

37 (e) The department of labor and industries shall appoint two
38 labor representatives;

1 (f) The department of labor and industries shall appoint one
2 representative of both an association representing physicians who
3 perform examinations for purposes of workers' compensation insurance
4 and the panel companies that work with them; and

5 (g) The department of labor and industries shall appoint one
6 attorney who represents injured workers.

7 (2) The work group must:

8 (a) Develop strategies for reducing the number of medical
9 examinations per claim while considering claim duration and medical
10 complexity;

11 (b) Develop strategies for improving access to medical records,
12 including records and reports created during the course of or
13 pursuant to an examination;

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

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

18 (e) Consider workers' rights in the independent medical
19 examination process including attendance, specialist consultations,
20 the audio or video recording of examinations, and the distance and
21 location of examinations;

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

24 (g) Identify barriers to increasing the supply of in-state
25 physicians willing to do independent medical examinations in the
26 workers' compensation system.

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

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

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.36
31 RCW to read as follows:

32 (1) The department may adopt rules to implement section 3 of this
33 act.

34 (2) The department must adopt rules, policies, and processes
35 governing the use of telemedicine for independent medical
36 examinations under section 3 of this act. Development of rules may
37 include a pilot project. Consideration should be given to all
38 available research regarding the use of telemedicine for independent
39 medical examinations.

1 NEW SECTION. **Sec. 6.** Sections 1 through 3 of this act take
2 effect January 1, 2021."

3 Correct the title.

EFFECT: Clarifies language regarding who is prohibited from assessing no-show fees against workers (reference to "self-insurer" is removed since only the Department is authorized to impose no-show fees).

Specifies that the Department must determine if telemedicine is appropriate, in order to use telemedicine as an alternative to an independent medical examination (IME) at a place reasonably convenient to the worker.

Specifies that the Department must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in the community that is reasonably convenient for the worker.

Requires the Department to adopt rules, policies, and processes regarding the use of telemedicine. Specifies the rules may include a pilot project and consideration should be given to all available research regarding the use of telemedicine for IMEs.

Delays the effective date of all provisions of the bill except for provisions regarding the work group and rule making.

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