
SENATE BILL 6440

State of Washington

66th Legislature

2020 Regular Session

By Senators Stanford, Hunt, Keiser, McCoy, Das, and Conway

Read first time 01/16/20. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to industrial insurance medical examinations;
2 amending RCW 51.32.110 and 51.36.070; and adding a new section to
3 chapter 51.08 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08
6 RCW to read as follows:

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

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

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

1 residing in the United States at the time that a medical examination
2 is requested may be required to submit to an examination at any
3 location in the United States determined by the department or self-
4 insurer.

5 (2) If the worker refuses to submit to medical examination, or
6 obstructs the same, or, if any injured worker shall persist in
7 unsanitary or injurious practices which tend to imperil or retard his
8 or her recovery, or shall refuse to submit to such medical or
9 surgical treatment as is reasonably essential to his or her recovery
10 or refuse or obstruct evaluation or examination for the purpose of
11 vocational rehabilitation or does not cooperate in reasonable efforts
12 at such rehabilitation, the department or the self-insurer upon
13 approval by the department, with notice to the worker may suspend any
14 further action on any claim of such worker so long as such refusal,
15 obstruction, noncooperation, or practice continues and reduce,
16 suspend, or deny any compensation for such period: PROVIDED, That
17 (~~the~~) (a) The department or the self-insurer shall not suspend any
18 further action on any claim of a worker or reduce, suspend, or deny
19 any compensation if a worker has good cause for refusing to submit to
20 or to obstruct any examination, evaluation, treatment or practice
21 requested by the department or required under this section and (b)
22 the department or self-insurer may not assess a no-show fee against
23 the worker if the worker gives at least five business days' notice of
24 the worker's intent not to attend the examination.

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

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

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

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

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

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

3 (1) Whenever the ((director)) department or the self-insurer
4 deems it necessary in order to resolve ((any)) a new medical issue, a
5 worker shall submit to examination by a physician or physicians
6 selected by the ((director)) department, with the rendition of a
7 report to the person ordering the examination, the attending
8 physician, and the injured worker.

9 (a) Prior to ordering an examination, the department must first
10 notify the attending physician in writing of the worker's right to a
11 consultation with a specialist to resolve any issues regarding
12 medical treatment. If the attending physician chooses to not
13 facilitate the consultation or is unable to identify a consulting
14 specialist within fourteen days of the receipt of notice, then an
15 examination may be ordered.

16 (b) The total number of examinations per claim is limited as
17 follows:

18 (i) One examination prior to an order under RCW 51.52.050 or
19 51.52.060, allowing or denying a new claim, becoming final and
20 binding.

21 (ii) One examination for a permanent disability evaluation.
22 Another permanent disability evaluation examination is allowed
23 following each time a claim is reopened under RCW 51.32.160 or if the
24 department or self-insurer authorizes further curative or
25 rehabilitative treatment.

26 (iii) One examination following the filing of any application to
27 reopen a claim under RCW 51.32.160 and prior to a final order under
28 RCW 51.52.050 or 51.52.060 allowing or denying reopening of the
29 claim.

30 (iv) Additional examinations may be performed after a final
31 allowance order or final order to reopen a claim and prior to any
32 permanent disability evaluation but no more than one examination per
33 each new medical issue as defined in section 1 of this act.

34 (c) A worker has the right to record either the audio, video, or
35 both, of all examinations ordered under this section, RCW 51.32.110,
36 or by the board of industrial insurance appeals. The worker must pay
37 the costs of recording the examination and must provide one copy,
38 upon request, to the department or self-insured employer within
39 fourteen days of receiving the request, but in no case prior to the
40 issuance of a written report of examination. The worker must take

1 reasonable steps to ensure the recording equipment does not interfere
2 with the examination.

3 (d) The worker has the right to have one person, of the worker's
4 choosing, present to observe all examinations ordered under this
5 section, RCW 51.32.110, or by the board of industrial insurance
6 appeals. The observer must be unobtrusive and not interfere with the
7 exam.

8 (e) The examination must be at a place reasonably convenient to
9 the injured worker. For purposes of this subsection, "reasonably
10 convenient" means at a place where residents in the injured worker's
11 community would normally travel to seek medical care for the same
12 specialty as the examiner. The department and the self-insured
13 employer may not use the lack of available specialists to require
14 workers to travel beyond what is reasonably convenient.

15 (f) There may be more than one examiner, but each examiner must
16 have a different board certification. The examination may take place
17 at two or more different times or locations, but all examinations
18 must be completed within three weeks of the first examination.
19 However, the department may extend the time period for completion of
20 all the examinations for documented extraordinary circumstances.

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

24 (ii) The department must send a written notice of the examination
25 to the injured worker no later than fifteen days prior to the
26 examination.

27 (h) When the department schedules an examination at the request
28 of a self-insured employer, all charges for such examination must be
29 paid by the self-insured employer pursuant to the fee schedules set
30 by the department and may not pay any amount in excess of the fee
31 schedule.

32 (2) The department or self-insurer, as the case may be, shall
33 provide the physician performing an examination with all relevant
34 medical records from the worker's claim file. (~~The director, in his~~
35 ~~or her discretion, may charge the cost of such examination or~~
36 ~~examinations to the self-insurer or to the medical aid fund as the~~
37 ~~case may be.))~~ The cost of said examination shall include payment to
38 the worker of reasonable expenses connected therewith.

1 (3) Examiners shall make themselves reasonably available for
2 testimony before the board on industrial insurance appeals within one
3 hundred miles of the place where the examination occurred.

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

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

20 (6) All examinations shall result in a written report, which
21 shall be sent to the department within fourteen days of the
22 examination. Copies of all such reports shall be mailed to the
23 attending physician by the department or the self-insured with a
24 request for a response within thirty days; except for psychiatric
25 exams.

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

27 (8) This section applies prospectively to all claims regardless
28 of the date of injury.

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