

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 6440**

Chapter 213, Laws of 2020

66th Legislature  
2020 Regular Session

INDUSTRIAL INSURANCE MEDICAL EXAMINATIONS--VARIOUS PROVISIONS

EFFECTIVE DATE: June 11, 2020—Except for sections 1 through 3, which become effective January 1, 2021.

Passed by the Senate March 7, 2020  
Yeas 48 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House March 4, 2020  
Yeas 97 Nays 0

LURIE JINKINS

**Speaker of the House of  
Representatives**

Approved March 27, 2020 2:55 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6440** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

March 27, 2020

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE SENATE BILL 6440

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AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

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

READ FIRST TIME 02/07/20.

1 AN ACT Relating to industrial insurance medical examinations;  
2 amending RCW 51.32.110 and 51.36.070; adding a new section to chapter  
3 51.08 RCW; adding a new section to chapter 51.36 RCW; creating a new  
4 section; providing an effective date; and providing an expiration  
5 date.

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

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

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

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

16 (1) ~~((Any))~~ As required under RCW 51.36.070, any worker entitled  
17 to receive any benefits or claiming such under this title shall, if  
18 requested by the department or self-insurer, submit himself or  
19 herself for medical examination, ~~((at a time and from time to time,))~~  
20 at a place reasonably convenient for the worker ~~((and as may be~~

1 ~~provided by the rules of the department~~). An injured worker, whether  
2 an alien or other injured worker, who is not residing in the United  
3 States at the time that a medical examination is requested may be  
4 required to submit to an examination at any location in the United  
5 States determined by the department or self-insurer.

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

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

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

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

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

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

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

5 (1)(a) Whenever the ((director)) department or the self-insurer  
6 deems it necessary in order to ((resolve any)) (i) make a decision  
7 regarding claim allowance or reopening, (ii) resolve a new medical  
8 issue, an appeal, or case progress, or (iii) evaluate the worker's  
9 permanent disability or work restriction, a worker shall submit to  
10 examination by a physician or physicians selected by the ((director))  
11 department, with the rendition of a report to the person ordering the  
12 examination, the attending physician, and the injured worker.

13 (b) The examination must be at a place reasonably convenient to  
14 the injured worker, or alternatively utilize telemedicine if the  
15 department determines telemedicine is appropriate for the  
16 examination. For purposes of this subsection, "reasonably convenient"  
17 means at a place where residents in the injured worker's community  
18 would normally travel to seek medical care for the same specialty as  
19 the examiner. The department must address in rule how to accommodate  
20 the injured worker if no approved medical examiner in the specialty  
21 needed is available in that community.

22 (2) The department or self-insurer shall provide the physician  
23 performing an examination with all relevant medical records from the  
24 worker's claim file. The director, in his or her discretion, may  
25 charge the cost of such examination or examinations to the self-  
26 insurer or to the medical aid fund as the case may be. The cost of  
27 said examination shall include payment to the worker of reasonable  
28 expenses connected therewith.

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

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

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

1 (a) The speaker of the house of representatives shall appoint two  
2 members from the house of representatives, with one member appointed  
3 from each of the two largest caucuses of the house of  
4 representatives;

5 (b) The president of the senate shall appoint two members from  
6 the senate, with one member appointed from each of the two largest  
7 caucuses of the senate;

8 (c) The department of labor and industries shall appoint one  
9 business representative representing employers participating in the  
10 state fund;

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

14 (e) The department of labor and industries shall appoint two  
15 labor representatives;

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

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

22 (2) The work group must:

23 (a) Develop strategies for reducing the number of medical  
24 examinations per claim while considering claim duration and medical  
25 complexity;

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

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

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

33 (e) Consider workers' rights in the independent medical  
34 examination process including attendance, specialist consultations,  
35 the audio or video recording of examinations, and the distance and  
36 location of examinations;

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

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

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

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

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

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

11 (2) The department must adopt rules, policies, and processes  
12 governing the use of telemedicine for independent medical  
13 examinations under section 3 of this act. Development of rules may  
14 include a pilot project. Consideration should be given to all  
15 available research regarding the use of telemedicine for independent  
16 medical examinations.

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

Passed by the Senate March 7, 2020.

Passed by the House March 4, 2020.

Approved by the Governor March 27, 2020.

Filed in Office of Secretary of State March 27, 2020.

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