
SENATE BILL 5195

State of Washington

57th Legislature

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By Senators Prentice, Winsley, Kline, Gardner and Franklin

Read first time 01/15/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to medical examinations under the industrial
2 insurance system; amending RCW 51.32.110, 51.36.070, and
3 51.32.112; adding a new section to chapter 51.36 RCW; creating a
4 new section; recodifying RCW 51.32.112; and repealing RCW
5 51.32.114.

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

7 **Sec. 1.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
8 as follows:

9 (1) Any worker entitled to receive any benefits or claiming
10 such under this title shall, if requested by the department or
11 self-insurer, submit himself or herself for medical examination(~~(7~~
12 ~~at a time and from time to time, at a place reasonably convenient~~
13 ~~for the worker and as may be provided by the rules of the~~
14 ~~department. An injured worker, whether an alien or other injured~~
15 ~~worker, who is not residing in the United States at the time that~~
16 ~~a medical examination is requested may be required to submit to an~~
17 ~~examination at any location in the United States determined by the~~
18 ~~department or self-insurer)) as authorized in RCW 51.36.070.~~

1 (2) If the worker refuses to submit to medical examination, or
2 obstructs the same, or, if any injured worker shall persist in
3 unsanitary or injurious practices which tend to imperil or retard
4 his or her recovery, or shall refuse to submit to such medical or
5 surgical treatment as is reasonably essential to his or her
6 recovery or refuse or obstruct evaluation or examination for the
7 purpose of vocational rehabilitation or does not cooperate in
8 reasonable efforts at such rehabilitation, the department or the
9 self-insurer upon approval by the department, with notice to the
10 worker may suspend any further action on any claim of such worker
11 so long as such refusal, obstruction, noncooperation, or practice
12 continues and reduce, suspend, or deny any compensation for such
13 period: PROVIDED, That the department or the self-insurer shall not
14 suspend any further action on any claim of a worker or reduce,
15 suspend, or deny any compensation if a worker has good cause for
16 refusing to submit to or to obstruct any examination, evaluation,
17 treatment or practice requested by the department or required
18 under this section.

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

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

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

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

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

36 **Sec. 2.** RCW 51.36.070 and 1977 ex.s. c 350 s 60 are each amended
37 to read as follows:

1 (1) When a medical examination is conducted under this title:

2 (a) The examination must be conducted at a medical facility
3 suitable for the examination and reasonably convenient for the
4 worker;

5 (b) The examination must be conducted with due regard and
6 respect for the privacy and dignity of the injured worker and for
7 the safety and convenient access of the worker; and

8 (c) The worker may be accompanied by an uncompensated person
9 who may observe the examination but not interfere with or obstruct
10 the examination. The worker or person accompanying the worker may,
11 at the worker's expense, make an audio or video recording of the
12 examination, if the recording is made in an unobtrusive
13 manner. This section does not limit the department or self-
14 insurer's obligation to provide necessary interpreter services.

15 (2) Subject to subsection (3) of this section, whenever the
16 director or the self-insurer deems it necessary in order to
17 resolve any medical issue, the department or self-insurer may, at
18 a time and from time to time and as may be provided by department
19 rules, order a worker ((shall)) to submit to examination by ((a
20 physician or physicians selected)) a provider or providers
21 approved by the director((, with the rendition of a report to the
22 person ordering the examination)) and competent to examine the
23 worker and evaluate the injury or disease from which the worker
24 suffers. An injured worker who is not residing in the United States
25 at the time that a medical examination is ordered may be required
26 to submit to an examination at any suitable medical facility in
27 the United States as determined by the department or self-insurer.

28 (3)(a) When ordering a medical examination, the department or
29 self-insurer must first request in writing, with a copy of the
30 request submitted to the worker and the worker's representative,
31 if any, that the worker's attending physician or other treating
32 provider conduct an examination and make a report on the medical
33 issue in question. The attending physician or treating provider
34 may, without prior authorization from the department or self-
35 insurer, make a consultation referral to a provider approved by
36 the director and licensed to practice in the same field or
37 specialty as the attending physician or treating provider, as

1 relevant. The consultant shall conduct the examination and make a
2 report to the provider requesting the examination.

3 (b) If the medical issue is not resolved by the requested
4 examination and report, the department or self-insurer may request
5 the attending physician or treating provider to make a
6 consultation referral to a provider approved by the director and
7 licensed to practice in the same field or specialty as the
8 worker's attending physician or treating provider, as relevant.

9 (c) If the worker's attending physician or treating provider is
10 unwilling or unable to conduct the examination or make a
11 consultation referral, as requested by the department or self-
12 insurer, the department or self-insurer may order a medical
13 examination by a provider or providers agreed upon by the worker
14 and the department or self-insurer.

15 (d) To resolve a material dispute regarding treatment or
16 diagnosis between the attending physician or treating provider and
17 a consulting provider, the department or self-insurer may order a
18 medical examination to be conducted by a provider that the injured
19 worker chooses from a list of at least five providers submitted by
20 the department or self-insurer to the worker.

21 (4)(a) A provider conducting a medical examination ordered
22 under this section must submit a report to the department or self-
23 insurer as the case may be and, on the same day that the report is
24 submitted, submit a copy of the report to the worker, the worker's
25 representative, if any, the worker's attending physician, and the
26 worker's employer.

27 (b) If the department or self-insurer relies on the examination
28 report to deny, limit, or terminate benefits to a worker, the
29 department or self-insurer must give the worker's attending
30 physician no less than thirty days from the physician's receipt of
31 the report to provide a written response to the report.

32 (5) In resolving a medical issue under this title, the
33 department or self-insurer must:

34 (a) Base the decision only on medical opinion that is founded
35 on factual data supported by the evidence; and

36 (b) Give more weight to the medical opinion of the worker's
37 attending physician or treating provider than to the opinion of a
38 provider who has examined, but not treated, the worker.

1 (6) The director, in his or her discretion, may charge the cost
2 of ~~((such))~~ a medical examination or examinations ordered under
3 this title to the self-insurer or to the medical aid fund as the
4 case may be. The cost of ~~((said))~~ the examination shall include
5 payment to the worker of reasonable expenses connected
6 ~~((therewith))~~ with the examination as provided in RCW 51.32.110.

7 (7) For the purposes of this section, "medical issue" includes
8 all questions within the expertise of the provider, including but
9 not limited to, cause of the injury or disease, establishment of
10 diagnoses, the course of or need for treatment, the condition of
11 the worker and whether the condition is fixed and stable,
12 limitations on return-to-work activities, review of job analyses,
13 and assessment of permanent disability.

14 **Sec. 3.** RCW 51.32.112 and 1993 c 515 s 4 are each amended to read
15 as follows:

16 (1) The department shall ~~((develop standards for))~~ adopt rules
17 governing the conduct of ~~((special))~~ medical examinations ~~((to~~
18 ~~determine permanent disabilities))~~ ordered under this title,
19 including, but not limited to:

20 (a) The qualifications of persons conducting the examinations.
21 To conduct an examination, a provider must, at a minimum, be
22 licensed to practice at the time of the examination:

23 (i) In the same field or specialty as the worker's attending
24 physician or treating provider, as relevant, with an active
25 practice involving direct patient care at least weekly in that
26 field or specialty. This requirement may be waived by mutual
27 agreement between the worker and the department or self-insurer;
28 and

29 (ii) Medicine or surgery under chapter 18.71 RCW, osteopathic
30 medicine and surgery under chapter 18.57 RCW, podiatric medicine
31 and surgery under chapter 18.22 RCW, dentistry under chapter 18.30
32 RCW, chiropractic under chapter 18.25 RCW, or psychology under
33 chapter 18.83 RCW;

34 (b) The criteria for removing examiners from the list of
35 approved examiners, including but not limited to the department
36 determining after reasonable investigation that the provider:

1 (i) Committed professional or other misconduct, including a
2 violation of RCW 51.48.280, or demonstrated incompetency in
3 connection with providing medical examinations under this title;

4 (ii) Exceeded the limits of his or her professional competence
5 in conducting medical examinations or made materially false
6 statements regarding his or her qualifications in his or her
7 application as an examiner;

8 (iii) Failed to transmit copies of medical reports, or failed
9 to submit full and truthful medical reports of his or her
10 findings, as required by this title;

11 (iv) Knowingly made a false statement or representation as to a
12 material fact in any medical report made under this title or in
13 testifying or otherwise providing information for the purposes of
14 this title; or

15 (v) Refused to appear before, testify, submit to deposition, or
16 answer a material question of the department, or board of
17 industrial insurance appeals, or produce a material document
18 concerning his or her provision of services under this title;

19 ~~((b))~~ (c) The criteria for conducting the examinations,
20 including guidelines for the appropriate treatment of injured
21 workers during the examination; and

22 ~~((e))~~ (d) The content of examination reports, including a
23 requirement that examination reports contain a signed statement
24 certifying that the report is a full and truthful representation
25 of the examiner's professional opinion with respect to the injured
26 worker's condition.

27 (2) Within the appropriate scope of practice, chiropractors
28 licensed under chapter 18.25 RCW may conduct special medical
29 examinations to determine permanent disabilities under RCW
30 51.32.055 in consultation with physicians licensed under chapter
31 18.57 or 18.71 RCW. The department, in its discretion, may request
32 that a special medical examination be conducted by a single
33 chiropractor if the department determines that the sole issues
34 involved in the examination are within the scope of practice under
35 chapter 18.25 RCW. However, nothing in this section authorizes the
36 use as evidence before the board of a chiropractor's determination
37 of the extent of a worker's permanent disability if the
38 determination is not requested by the department.

1 (3) The department must examine the credentials of providers
2 conducting medical examinations ordered under this title and must
3 monitor the quality and objectivity of the examinations and
4 examination reports obtained by the department and self-insured
5 employers. The department's rules must ensure that examinations
6 ordered under this title are performed only by qualified providers
7 meeting department standards.

8 (4) The department shall investigate the amount of examination
9 fees received by persons conducting (~~special~~) medical
10 examinations (~~to determine permanent disabilities~~) ordered under
11 this title, including total compensation received for examinations
12 of department and self-insured claimants, and establish
13 compensation guidelines and compensation reporting criteria.

14 (~~(4)~~) (5) The department shall investigate the level of
15 compliance of self-insurers with the requirement of full reporting
16 of claims information to the department, particularly with respect
17 to medical examinations, and develop effective enforcement
18 procedures or recommendations for legislation if needed.

19 NEW SECTION. Sec. 4. RCW 51.32.112 is recodified as a new
20 section in chapter 51.36 RCW.

21 NEW SECTION. Sec. 5. RCW 51.32.114 (Medical examination--
22 Department to monitor quality and objectivity) and 1988 c 114 s 3
23 are each repealed.

24 NEW SECTION. Sec. 6. This act applies to all medical
25 examinations ordered under Title 51 RCW on or after the effective
26 date of this act.

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