

2SHB 1503 - H AMD 302

By Representative Conway

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

3 "Sec. 1. RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended
4 to read as follows:

5 In all (~~hearings, actions or~~) proceedings before the department
6 (~~or the board of industrial insurance appeals, or before any court on~~
7 ~~appeal from the board,~~) any physician or licensed advanced registered
8 nurse practitioner having theretofore examined or treated the claimant
9 may be required to (~~testify fully~~) make reports requested by the
10 department or self-insurer regarding such examination or treatment, and
11 shall not be exempt from (~~so testifying~~) making reports by reason of
12 the relation of the physician or licensed advanced registered nurse
13 practitioner to patient. In all hearings, actions, or proceedings
14 before the board of industrial insurance appeals, or before any court
15 on appeal from the board of industrial insurance appeals, the claimant
16 shall be deemed to waive the physician-patient privilege under RCW
17 5.60.060, subject to the limitations imposed pursuant to court rules
18 and section 3 of this act.

19 **Sec. 2.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read
20 as follows:

21 Physicians or licensed advanced registered nurse practitioners
22 examining or attending injured workers under this title shall comply
23 with rules and regulations adopted by the director, and shall make such
24 reports as may be requested by the department or self-insurer upon the
25 condition or treatment of any such worker, or upon any other matters
26 concerning such workers in their care. Except under RCW 49.17.210
27 (~~and~~), 49.17.250, and section 3 of this act, all medical information
28 in the possession or control of any person and relevant to the
29 particular injury in the opinion of the department pertaining to any

1 worker whose injury or occupational disease is the basis of a claim
2 under this title shall be made available (~~(at any stage of the~~
3 ~~proceedings)~~) to the employer, the claimant's representative, and the
4 department upon request, and no person shall incur any legal liability
5 by reason of releasing such information. In all hearings, actions, or
6 proceedings before the board of industrial insurance appeals, or before
7 any court on appeal from the board of industrial insurance appeals,
8 requests for medical information under this subsection are subject to
9 limitations imposed pursuant to court rules and section 3 of this act.
10

11 NEW SECTION. Sec. 3. A new section is added to chapter 51.52 RCW
12 to read as follows:

13 (1)(a) After notice of appeal under RCW 51.52.060 with a
14 preliminary list of witnesses, the department, the employer, and the
15 representatives of each, shall not have ex parte contact, to discuss
16 the facts or issues in question in the appeal, with any medical
17 provider who:

18 (i) Has examined or treated the claimant at the request of the
19 claimant or a treating medical provider; and

20 (ii) Has or is testifying in the appeal on behalf of the claimant
21 and is listed on the preliminary list of witnesses.

22 (b) This subsection shall not apply once the claimant's case in
23 chief is presented and the claimant rests the case, or if written
24 authorization for the contact is given by the claimant or the
25 claimant's representative or by court rule.

26 (2) After notice of an appeal under RCW 51.52.060 with a
27 preliminary list of witnesses, the claimant and the representative for
28 the claimant, if any, shall not have ex parte contact, to discuss the
29 facts or issues in question in the appeal, with any medical provider
30 who examined the claimant pursuant to RCW 51.36.070, unless written
31 authorization for the contact is given by the department or self-
32 insured employer or by court rule.

33 (3) Written requests for medical records shall not be considered ex
34 parte contact.

35 (4) This section only applies to issues set forth in a notice of
36 appeal under RCW 51.52.060.

1 (5) Nothing in this section shall be construed to limit reporting
2 requirements under RCW 51.04.050 and 51.36.060 for issues not set forth
3 in a notice of appeal.

4 **Sec. 4.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
5 as follows:

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

16 (2) If the worker refuses to submit to medical examination, or
17 obstructs the same, or, if any injured worker shall persist in
18 unsanitary or injurious practices which tend to imperil or retard his
19 or her recovery, or shall refuse to submit to such medical or surgical
20 treatment as is reasonably essential to his or her recovery or refuse
21 or obstruct evaluation or examination for the purpose of vocational
22 rehabilitation or does not cooperate in reasonable efforts at such
23 rehabilitation, the department or the self-insurer upon approval by the
24 department, with notice to the worker may suspend any further action on
25 any claim of such worker so long as such refusal, obstruction,
26 noncooperation, or practice continues and reduce, suspend, or deny any
27 compensation for such period: PROVIDED, That the department or the
28 self-insurer shall not suspend any further action on any claim of a
29 worker or reduce, suspend, or deny any compensation if a worker has
30 good cause for refusing to submit to or to obstruct any examination,
31 evaluation, treatment or practice requested by the department or
32 required under this section.

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

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

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

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

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

12 **Sec. 5.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to read
13 as follows:

14 (1) Subject to subsection (3) of this section, whenever the
15 director or the self-insurer deems it necessary in order to resolve any
16 medical issue, the department or self-insurer may, at a time and from
17 time to time at a place reasonably convenient for the worker and as may
18 be provided by department rules, require a worker ((shall)) to submit
19 to examination ((by a physician or physicians selected by the director,
20 with the rendition of a report to the person ordering the examination))
21 with the rendition of a report to the department or the self-insurer.
22 An injured worker, whether an alien or other injured worker, who is not
23 residing in the United States at the time that a medical examination is
24 ordered may be required to submit to an examination at any location in
25 the United States determined by the department or self-insurer.

26 (2) The department or self-insurer shall provide the physician
27 performing an examination with all relevant medical records from the
28 worker's claim file.

29 (3)(a) To obtain a rating for permanent partial disability as
30 provided in RCW 51.32.080, the department or self-insurer shall first
31 request that the worker's attending physician or treating provider
32 conduct an examination and provide a report on the impairment, if any.
33 The attending physician or treating provider must be qualified in an
34 appropriate specialty to provide the rating.

35 (b) If the attending physician or treating provider chooses not to
36 conduct the requested examination, he or she may make a referral to a

1 provider qualified in an appropriate specialty to perform the
2 examination and provide a report on the impairment, if any.

3 (4)(a) To the extent practicable, a provider conducting an
4 examination under RCW 51.36.070 must consult with the worker's
5 attending physician or treating provider on the outcome of the
6 examination, including providing the attending physician or treating
7 provider with a copy of any report related to the examination prior to
8 submitting the report to the department or self-insurer.

9 (b) If an examination is necessary to obtain a rating for permanent
10 partial disability or to resolve any other medical or treatment issue,
11 the department or self-insurer shall submit a copy of the report from
12 the provider or providers conducting the examination forthwith to the
13 attending physician or treating provider. The examination report shall
14 be part of the claim file and shall promptly be made available to the
15 worker or the worker's representative upon request.

16 (5) The director, in his or her discretion, may charge the cost of
17 such examination or examinations to the self-insurer or to the medical
18 aid fund as the case may be. The cost of said examination shall
19 include payment to the worker of reasonable expenses connected
20 therewith.

21 **Sec. 6.** RCW 51.32.112 and 1993 c 515 s 4 are each amended to read
22 as follows:

23 (1) It is the duty of providers conducting medical examinations
24 under RCW 51.36.070 to provide objective, professional, and complete
25 medical examinations and reports. To obtain independent and medically
26 appropriate information and recommendations from examinations, the
27 department shall (~~develop standards for the conduct of special~~) adopt
28 rules governing the qualifications of providers who conduct medical
29 examinations (~~to determine permanent disabilities, including, but not~~
30 limited to:)) under RCW 51.36.070.

31 (~~(a) The qualifications of persons conducting the examinations;~~
32 ~~(b)~~) (2) To conduct examinations under RCW 51.36.070, a provider
33 must first be approved by the department. At a minimum, the provider:

34 (a) Must be licensed to practice, at the time of the examination,
35 medicine or surgery under chapter 18.71 RCW, osteopathic medicine and
36 surgery under chapter 18.57 RCW, podiatric medicine and surgery under

1 chapter 18.22 RCW, dentistry under chapter 18.32 RCW, chiropractic
2 under chapter 18.25 RCW, or psychology under chapter 18.83 RCW;

3 (b) Must not have had convictions of any crime, gross misdemeanor,
4 felony, or violation of statutes or rules by any administrative agency,
5 court, or board;

6 (c) Must not have had disciplinary action concerning sexual
7 misconduct at any time during his or her professional career; and

8 (d) Must attend all continuing education programs or credits that
9 may be required by the department.

10 (3) In addition to the criteria set forth under subsection (2) of
11 this section, the department shall also consider the following criteria
12 when approving medical providers to conduct examinations under RCW
13 51.36.070:

14 (a) Whether the provider has had any disciplinary action for
15 ethical or other offenses imposed by a state board of medical
16 licensure, as validated by the department, within the ten years prior
17 to applying to the department for approval as an examiner; and

18 (b) Whether the provider has had any disciplinary action or
19 administrative action taken by the department at any time during his or
20 her professional career.

21 (4) The criteria for ~~((conducting the examinations, including~~
22 ~~guidelines for the appropriate treatment of injured workers during the~~
23 ~~examination; and~~

24 ~~(c) The content of examination reports)) removing providers from~~
25 ~~the list of providers approved to conduct examinations under RCW~~
26 ~~51.36.070 includes, but is not limited to:~~

27 (a) Disciplinary action involving sexual misconduct or ethical
28 offense imposed by any state board of medical licensure;

29 (b) Failure to maintain ethical standards in conducting
30 examinations as determined by the department from complaints received
31 about the provider or from reviews of the quality and timeliness of
32 examination reports;

33 (c) Convictions of any crime, gross misdemeanor, felony, or
34 violation of statutes or rules by any administrative agency, court, or
35 board; or

36 (d) Refusal to submit to deposition, appear before, testify, or
37 answer a material question of the department, or board of industrial

1 insurance appeals, or produce a material document concerning his or her
2 provision of services under this title.

3 (5) Providers who fail to meet requirements set forth in this
4 section may be immediately removed from the list of examiners approved
5 to conduct examinations under RCW 51.36.070.

6 ~~((+2))~~ (6) Within the appropriate scope of practice, chiropractors
7 licensed under chapter 18.25 RCW may conduct special medical
8 examinations to determine permanent disabilities in consultation with
9 physicians licensed under chapter 18.57 or 18.71 RCW. The department,
10 in its discretion, may request that a special medical examination be
11 conducted by a single chiropractor if the department determines that
12 the sole issues involved in the examination are within the scope of
13 practice under chapter 18.25 RCW. However, nothing in this section
14 authorizes the use as evidence before the board of a chiropractor's
15 determination of the extent of a worker's permanent disability if the
16 determination is not requested by the department.

17 ~~((3))~~ ~~The department shall investigate the amount of examination~~
18 ~~fees received by persons conducting special medical examinations to~~
19 ~~determine permanent disabilities, including total compensation received~~
20 ~~for examinations of department and self-insured claimants, and~~
21 ~~establish compensation guidelines and compensation reporting criteria.~~

22 ~~(4))~~ (7) As required in RCW 51.04.030, providers may only be paid
23 in accordance with the maximum fees published by the department.

24 (8) The department must examine the credentials of providers
25 conducting examinations ordered under RCW 51.36.070 and must monitor
26 the quality and objectivity of the examinations and examination reports
27 obtained by the department and self-insured employers. The
28 department's rules must ensure that examinations ordered under RCW
29 51.36.070 are performed only by qualified providers meeting department
30 standards.

31 (9) The department shall provide oversight and monitor compliance
32 with the requirements of this section and section 7 of this act by
33 providers who perform examinations under RCW 51.36.070 for both the
34 state fund and self-insurers. This shall include the development of a
35 process for obtaining and responding to complaints from state fund and
36 self-insured workers and from providers. The department shall
37 periodically collect information from workers, attending providers, and
38 providers conducting examinations under RCW 51.36.070 about the quality

1 of examinations and reports provided under RCW 51.36.070 and shall
2 audit the level of compliance of examiners, self-insurers, and the
3 state fund with regard to the requirements of sections 3 through 8 of
4 this act.

5 (10) The department shall investigate the level of compliance of
6 self-insurers with the requirement of full reporting of claims
7 information to the department, particularly with respect to medical
8 examinations, and develop effective enforcement procedures or
9 recommendations for legislation if needed.

10 NEW SECTION. Sec. 7. A new section is added to chapter 51.36 RCW
11 to read as follows:

12 The department shall develop criteria for conducting examinations
13 under RCW 51.36.070 including, but not limited to:

14 (1) Guidelines for the appropriate treatment of injured workers
15 during an examination. The guidelines must include requirements that
16 the examiner:

17 (a) Provide to the examinee information on who requested the
18 examination;

19 (b) Create a final report based on a review of the records, the
20 examination, and sound medical knowledge;

21 (c) Allow the worker to be accompanied as provided by rule; and

22 (d) Provide a professional office suitable for the examination;

23 (2) Requirements for the content and timeliness of examination
24 reports under RCW 51.36.070. The requirements must include, but not be
25 limited to:

26 (a) A requirement that examination reports contain a signed
27 statement certifying that the conclusions and recommendations are
28 objective and unbiased;

29 (b) A requirement that all conclusions and recommendations are
30 based on a review of the records, the examinations of the worker, and
31 sound medical knowledge;

32 (c) A requirement that any examination report under RCW 51.36.070
33 be submitted to the department or self-insurer within fourteen calendar
34 days of the examination date, or within fourteen calendar days of the
35 receipt of the results of any special tests or studies requested as
36 part of the examination.

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

3 (1) Except as provided in RCW 51.36.020, the employer or
4 representative of the employer shall not attend a medical examination
5 or the rendering of ongoing treatment for an injured worker, nor shall
6 the employer or a representative of the employer be present at the
7 physical location of the examination or of the attending provider at
8 the time of the examination or treatment.

9 (2) This does not apply to instances of a self-insurer's
10 representative aiding in the provision of treatment and benefits to a
11 worker who has been catastrophically injured.

12 NEW SECTION. **Sec. 9.** The department shall adopt rules or modify
13 existing rules, as needed, to implement this act.

14 NEW SECTION. **Sec. 10.** RCW 51.32.112 is recodified as a section in
15 chapter 51.36 RCW.

16 NEW SECTION. **Sec. 11.** RCW 51.32.114 (Medical examination--
17 Department to monitor quality and objectivity) and 1988 c 114 s 3 are
18 each repealed.

19 NEW SECTION. **Sec. 12.** This act applies to medical examinations
20 ordered under Title 51 RCW on or after the effective date of this act."

21 Correct the title.

EFFECT: (1) Removes all provisions related to an employer or an
employer's representative providing detailed written reports to a
worker on issues discussed in meetings with attending physicians within
five days of the meeting. Removes all provisions related to giving
workers prior written notice of certain meetings and the right to
attend those meetings.

(2) Removes provisions establishing new procedures for all
independent medical examinations and instead creates new procedures for
examinations that are needed to rate a permanent partial disability.
Provides that, for these examinations, a request must first be made to
the worker's attending physician to conduct the examination and if, the

attending physician chooses not to conduct the examination, he or she may make a referral to a qualified consultant.

(3) Removes language that granted the attending physician 30 days to make comments on a report used to terminate or deny benefits and instead generally provides that the examination report must be made part of the claim file.

(4) Removes language related to a worker being accompanied by a person of his or her choice to an examination.

(5) Establishes a duty on independent medical examiners to provide unbiased, professional, and complete medical examinations reports.

(6) Establishes minimum qualifications for medical providers conducting independent medical examinations and criteria for removing providers from the list of approved examiners. Requires the Department to establish minimum criteria for conducting examinations. Requires the Department to provide oversight and monitor compliance by medical examiners, including a process for obtaining and responding to complaints of workers and providers, and auditing the level of compliance of examiners, self-insurers, and the state fund.

(7) Removes the null and void clause.

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