
HOUSE BILL 1402

State of Washington 61st Legislature 2009 Regular Session

By Representatives Williams, Campbell, Conway, Moeller, and Green

Read first time 01/20/09. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to contact with medical providers after appeals
2 have been filed under industrial insurance; adding a new section to
3 chapter 51.52 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The worker's compensation act, Title 51 RCW,
6 is impressed with a trust with workers as beneficiaries of the state
7 accident and medical aid funds and the department of labor and
8 industries, as trustee of the funds, has a duty toward these
9 beneficiaries. A trustee relationship does not exist between employers
10 and workers. It is therefore recognized that different rules,
11 obligations, and standards are applied to employers and their
12 representatives than those applied to the department of labor and
13 industries and its representatives.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.52 RCW
15 to read as follows:

16 (1)(a) Except as provided in (c) and (d) of this subsection, after
17 the filing of a notice of an appeal under RCW 51.52.060(2), the
18 employer and its representatives shall not have contact to discuss the

1 issues in question in the appeal with any medical provider who has
2 examined or treated the claimant at the request of the claimant or
3 treating medical provider, unless written authorization for contact is
4 given by the claimant or the claimant's representative. Written
5 authorization is only valid if given after the date that the appeal is
6 filed and expires ninety days after it is signed.

7 (b) Contact is permitted as necessary for the ongoing management of
8 the claim, including but not limited to communication regarding the
9 worker's treatment needs and the provider's treatment plan, vocational
10 and return-to-work issues and assistance, and certification of the
11 worker's inability to work, unless these issues are in question in the
12 appeal.

13 (c) If the employer or its representatives wish to communicate with
14 the examining or treating medical providers concerning the issues in
15 question in the appeal, and no written authorization from the claimant
16 or the claimant's representative has been obtained, the communication
17 must either be:

18 (i) In writing, sent contemporaneously to all parties with a notice
19 to the provider in bold type that any response must be in writing;

20 (ii) In person, by telephone, or by videoconference, at a date and
21 time mutually agreed to by all parties, with the claimant or the
22 claimant's representative given the opportunity to fully participate;
23 or

24 (iii) Pursuant to a properly scheduled and noted deposition.

25 (d) Written authorization is not required if the claimant fails to
26 identify or confirm the examining or treating medical provider as a
27 witness as required by the board.

28 (2)(a) Except as provided in (b) and (c) of this subsection, after
29 the filing of a notice of an appeal under RCW 51.52.060(2), the
30 claimant and the representative for the claimant, if any, shall not
31 have contact to discuss the issues in question in the appeal with any
32 medical provider who has examined the claimant at the request of the
33 employer pursuant to RCW 51.36.070, unless written authorization for
34 contact is given by the employer or its representative. Written
35 authorization is only valid if given after the date that the appeal is
36 filed and expires ninety days after it is signed.

37 (b) If the claimant or the claimant's representative wishes to
38 communicate with a medical provider who has examined the claimant

1 pursuant to RCW 51.36.070, and no written authorization from the
2 employer or its representative has been obtained, the communication
3 must either be:

4 (i) In writing, sent contemporaneously to all parties with a notice
5 to the provider in bold type that any response must be in writing;

6 (ii) In person, by telephone, or by videoconference, at a date and
7 time mutually agreed to by all parties, with the department, employer,
8 and their representatives given the opportunity to fully participate;
9 or

10 (iii) Pursuant to a properly scheduled and noted deposition.

11 (c) Written authorization is not required if the employer fails to
12 identify or confirm the examining medical provider as a witness as
13 required by the board.

14 (3) Subsections (1) and (2) of this section do not apply to the
15 department.

16 (a) Except as provided in (c) and (d) of this subsection, after an
17 appeal has been filed under RCW 51.52.060(2), a conference has been
18 held to schedule hearings, and the claimant has named his or her
19 witnesses, the department and its representatives shall not have
20 contact to discuss the issues in question in the appeal with any
21 medical provider who has examined or treated the claimant at the
22 request of the claimant or treating medical provider and has been named
23 as a witness by the claimant or their representative unless written
24 authorization for contact is given by the claimant or the claimant's
25 representative. Written authorization is only valid if given after the
26 date that the appeal is filed and expires ninety days after it is
27 signed.

28 (b) Contact is permitted as necessary for the ongoing management of
29 the claim, including but not limited to communication regarding the
30 worker's treatment needs and the provider's treatment plan, vocational
31 and return-to-work issues and assistance, and certification of the
32 worker's inability to work, unless these issues are in question in the
33 appeal.

34 (c) If the department or its representatives wish to communicate
35 with the examining or treating medical providers concerning the issues
36 in question in the appeal, and no written authorization from the
37 claimant or the claimant's representative has been obtained, the
38 communication must either be:

1 (i) In writing, sent contemporaneously to all parties with a notice
2 to the provider in bold type that any response must be in writing;

3 (ii) In person, by telephone, or by videoconference, at a date and
4 time mutually agreed to by all parties, with the claimant or the
5 claimant's representative given the opportunity to fully participate;
6 or

7 (iii) Pursuant to a properly scheduled and noted deposition.

8 (d) Written authorization is not required if the claimant fails to
9 identify or confirm the examining or treating medical provider as a
10 witness as required by the board.

11 (4)(a) Except as provided in (b) and (c) of this subsection, after
12 an appeal has been filed under RCW 51.52.060(2), a conference has been
13 held to schedule hearings, and the claimant has named his or her
14 witnesses, the claimant and the representative for the claimant, if
15 any, shall not have contact to discuss the issues in question in the
16 appeal with any medical provider who has examined the claimant at the
17 request of the department pursuant to RCW 51.36.070, unless written
18 authorization for contact is given by the department or its
19 representatives. Written authorization is only valid if given after
20 the date that the appeal is filed and expires ninety days after it is
21 signed.

22 (b) If the claimant or the claimant's representative wishes to
23 communicate with a medical provider who has examined the claimant
24 pursuant to RCW 51.36.070, and no written authorization from the
25 department or its representative has been obtained, the communication
26 must either be:

27 (i) In writing, sent contemporaneously to all parties with a notice
28 to the provider in bold type that any response must be in writing;

29 (ii) In person, by telephone, or by videoconference, at a date and
30 time mutually agreed to by all parties, with the department or its
31 representatives given the opportunity to fully participate; or

32 (iii) Pursuant to a properly scheduled and noted deposition.

33 (c) Written authorization is not required if the department fails
34 to identify or confirm the examining medical provider as a witness as
35 required by the board.

36 (5) The board may determine whether the parties have made
37 themselves reasonably available to participate in telephone or

1 videoconference communications as provided in subsections (1)(c)(ii),
2 (2)(b)(ii), (3)(c)(ii), and (4)(b)(ii) of this section.

3 (6) This section only applies to issues set forth in a notice of
4 appeal under RCW 51.52.060(2).

5 (7) This section does not limit the reporting requirements under
6 RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of
7 appeal.

8 (8) The department may adopt rules as necessary to implement the
9 provisions of this section.

10 NEW SECTION. **Sec. 3.** This act applies to orders entered on or
11 after the effective date of this section.

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