
SUBSTITUTE SENATE BILL 5102

State of Washington

67th Legislature

2021 Regular Session

By Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Stanford, Conway, Das, Keiser, and Kuderer)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to industrial insurance medical examinations;
2 amending RCW 51.36.070 and 51.32.195; adding a new section to chapter
3 51.52 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 51.36.070 and 2020 c 213 s 3 are each amended to
6 read as follows:

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

15 (b) In addition to the criteria specified in (a) of this
16 subsection, the department or self-insurer may order an examination
17 or request the attending provider to arrange a consultation in the
18 event of complication, controversy, or dispute over the treatment
19 aspects of any claim.

20 (i) The department must specify the amount of time, after a final
21 allowance order, before such an examination may be scheduled.

1 (ii) The department must specify the amount of time since the
2 last examination took place pursuant to these rules before another
3 examination may be scheduled.

4 (iii) The department must adopt additional rules necessary to
5 prevent duplicate examinations that address whether to authorize
6 necessary and proper medical treatment.

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

16 (d) 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 after
24 completion of further treatment if the department or self-insurer
25 authorizes curative or 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.

34 (v) The department must adopt rules to permit rare exceptions to
35 the limitations identified in this subsection (1)(d) in the case of
36 extraordinary circumstances, such as the death or disability of an
37 examiner prior to completion of the report, or irretrievable loss of
38 examination data.

39 (e) In claims involving self-insured employers:

1 (i) Notices of examinations scheduled pursuant to this section
2 must be mailed to the injured worker no later than 28 days prior to
3 the examination.

4 (ii) Where a timely dispute of the examination has been filed by
5 an injured worker, the department shall adjudicate whether or not the
6 injured worker should be compelled to attend.

7 (iii) The department shall adopt rules governing what constitutes
8 a timely dispute and under what circumstances it may delay such
9 examinations to complete its investigation.

10 (2) The department or self-insurer shall provide the physician
11 performing an examination with all relevant medical records from the
12 worker's claim file. The director, in his or her discretion, may
13 charge the cost of such examination or examinations to the self-
14 insurer or to the medical aid fund as the case may be. The cost of
15 said examination shall include payment to the worker of reasonable
16 expenses connected therewith.

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

22 (4) (a) A worker has the right to record either the audio, video,
23 or both, of all examinations ordered under this section, RCW
24 51.32.110, or by the board of industrial insurance appeals. The
25 worker must pay the costs of recording the examination and must
26 provide one copy, upon request, to the department or self-insured
27 employer within 14 days of receiving the request, but in no case
28 prior to the issuance of a written report of examination. The worker
29 must take reasonable steps to ensure the recording equipment does not
30 interfere with the examination.

31 (b) Any material alteration of the recording by the injured
32 worker or done on their behalf that results in the receipt of
33 benefits may be subject to repayment of those benefits pursuant to
34 RCW 51.32.240.

35 (c) The worker has the right to have one person, at least 21
36 years of age, of the worker's choosing, but not the worker's legal
37 representative, present to observe all examinations ordered under
38 this section, RCW 51.32.110, or by the board of industrial insurance
39 appeals. The observer must be unobtrusive and not interfere with the
40 exam.

1 (d) All such recordings shall be kept confidential pursuant to
2 RCW 51.28.070.

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

5 **Sec. 2.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to
6 read as follows:

7 On any industrial injury claim where the self-insured employer or
8 injured worker has requested a determination by the department, the
9 self-insurer must submit all medical reports and any other specified
10 information not previously submitted to the department. When the
11 department requests information from a self-insurer by ~~((certified))~~
12 mail, the self-insurer shall electronically submit all information in
13 its possession concerning a claim within ~~((ten))~~ five working days
14 from the date of receipt of such ~~((certified))~~ notice.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.52
16 RCW to read as follows:

17 In proceedings before the board, each party shall be limited to
18 presenting the testimony of one medical expert witness of the same
19 medical specialty, except the attending physician, unless good cause
20 is shown by the presenting party that a second medical specialist is
21 necessary to assist the trier of fact to understand the evidence.

22 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act apply
23 prospectively to all claims regardless of the date of injury.

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