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**SENATE BILL 5102**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Stanford, Conway, Das, Keiser, and Kuderer

Prefiled 01/07/21. Read first time 01/11/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

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) The examination must be at a place reasonably convenient to  
16 the injured worker, or alternatively utilize telemedicine if the  
17 department determines telemedicine is appropriate for the  
18 examination. For purposes of this subsection, "reasonably convenient"  
19 means at a place where residents in the injured worker's community  
20 would normally travel to seek medical care for the same specialty as  
21 the examiner. The department must address in rule how to accommodate

1 the injured worker if no approved medical examiner in the specialty  
2 needed is available in that community.

3 (c) The total number of examinations per claim is limited as  
4 follows:

5 (i) One examination prior to an order under RCW 51.52.050 or  
6 51.52.060, allowing or denying a new claim, becoming final and  
7 binding.

8 (ii) One examination for a permanent disability evaluation.  
9 Another permanent disability evaluation examination is allowed  
10 following each time a claim is reopened under RCW 51.32.160 or after  
11 completion of further treatment if the department or self-insurer  
12 authorizes curative or rehabilitative treatment.

13 (iii) One examination following the filing of any application to  
14 reopen a claim under RCW 51.32.160 and prior to a final order under  
15 RCW 51.52.050 or 51.52.060 allowing or denying reopening of the  
16 claim.

17 (iv) Additional examinations may be performed after a final  
18 allowance order or final order to reopen a claim and prior to any  
19 permanent disability evaluation but no more than one examination per  
20 each new medical issue.

21 (v) The department shall adopt rules to address when it may order  
22 an examination or request the attending physician to arrange a  
23 consultation where injured workers do not improve with sustained  
24 treatment.

25 (d) In claims involving self-insured employers:

26 (i) Notices of examinations scheduled pursuant to RCW 51.36.070  
27 must be mailed to the injured worker no later than 28 days prior to  
28 the examination.

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

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

35 (2) The department or self-insurer shall provide the physician  
36 performing an examination with all relevant medical records from the  
37 worker's claim file. The director, in his or her discretion, may  
38 charge the cost of such examination or examinations to the self-  
39 insurer or to the medical aid fund as the case may be. The cost of

1 said examination shall include payment to the worker of reasonable  
2 expenses connected therewith.

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

8 (4) (a) A worker has the right to record either the audio, video,  
9 or both, of all examinations ordered under this section, RCW  
10 51.32.110, or by the board of industrial insurance appeals. The  
11 worker must pay the costs of recording the examination and must  
12 provide one copy, upon request, to the department or self-insured  
13 employer within 14 days of receiving the request, but in no case  
14 prior to the issuance of a written report of examination. The worker  
15 must take reasonable steps to ensure the recording equipment does not  
16 interfere with the examination.

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

21 (c) The worker has the right to have one person, of the worker's  
22 choosing, present to observe all examinations ordered under this  
23 section, RCW 51.32.110, or by the board of industrial insurance  
24 appeals. The observer must be unobtrusive and not interfere with the  
25 exam.

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

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

30 On any industrial injury claim where the self-insured employer or  
31 injured worker has requested a determination by the department, the  
32 self-insurer must submit all medical reports and any other specified  
33 information not previously submitted to the department. When the  
34 department requests information from a self-insurer by ~~((certified))~~  
35 mail, the self-insurer shall electronically submit all information in  
36 its possession concerning a claim within ~~((ten))~~ five working days  
37 from the date of receipt of such ~~((certified))~~ notice.

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

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

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

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