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ENGROSSED SUBSTITUTE SENATE BILL 6440

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State of Washington

66th Legislature

2020 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Stanford, Hunt, Keiser, McCoy, Das, and Conway)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to industrial insurance medical examinations;  
2 amending RCW 51.32.110 and 51.36.070; adding a new section to chapter  
3 51.08 RCW; creating a new section; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08  
6 RCW to read as follows:

7 "New medical issue" means a medical issue not covered by a  
8 previous medical examination requested by the department or the self-  
9 insurer such as an issue regarding medical causation, medical  
10 treatment, work restrictions, or evaluating permanent partial  
11 disability.

12 **Sec. 2.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to  
13 read as follows:

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

1 States at the time that a medical examination is requested may be  
2 required to submit to an examination at any location in the United  
3 States determined by the department or self-insurer.

4 (2) If the worker refuses to submit to medical examination, or  
5 obstructs the same, or, if any injured worker shall persist in  
6 unsanitary or injurious practices which tend to imperil or retard his  
7 or her recovery, or shall refuse to submit to such medical or  
8 surgical treatment as is reasonably essential to his or her recovery  
9 or refuse or obstruct evaluation or examination for the purpose of  
10 vocational rehabilitation or does not cooperate in reasonable efforts  
11 at such rehabilitation, the department or the self-insurer upon  
12 approval by the department, with notice to the worker may suspend any  
13 further action on any claim of such worker so long as such refusal,  
14 obstruction, noncooperation, or practice continues and reduce,  
15 suspend, or deny any compensation for such period: PROVIDED, That  
16 (~~the~~) (a) The department or the self-insurer shall not suspend any  
17 further action on any claim of a worker or reduce, suspend, or deny  
18 any compensation if a worker has good cause for refusing to submit to  
19 or to obstruct any examination, evaluation, treatment or practice  
20 requested by the department or required under this section and (b)  
21 the department or self-insurer may not assess a no-show fee against  
22 the worker if the worker gives at least five business days' notice of  
23 the worker's intent not to attend the examination.

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

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

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

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

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

1       **Sec. 3.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to  
2 read as follows:

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

11       (b) The examination must be at a place reasonably convenient to  
12 the injured worker, or alternatively utilize telemedicine. For  
13 purposes of this subsection, "reasonably convenient" means at a place  
14 where residents in the injured worker's community would normally  
15 travel to seek medical care for the same specialty as the examiner.

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

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

28       (4) The department may adopt rules to implement this section.

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

31       NEW SECTION.       **Sec. 4.** (1) An independent medical examination  
32 work group is established within the department of labor and  
33 industries, with members as provided in this subsection.

34       (a) The speaker of the house of representatives shall appoint two  
35 members from the house of representatives, with one member appointed  
36 from each of the two largest caucuses of the house of  
37 representatives;

1 (b) The president of the senate shall appoint two members from  
2 the senate, with one member appointed from each of the two largest  
3 caucuses of the senate;

4 (c) The department of labor and industries shall appoint one  
5 business representative representing employers participating in the  
6 state fund;

7 (d) The department of labor and industries shall appoint one  
8 business representative representing employers who are self-insured  
9 for purposes of workers' compensation insurance;

10 (e) The department of labor and industries shall appoint two  
11 labor representatives;

12 (f) The department of labor and industries shall appoint one  
13 representative of both an association representing physicians who  
14 perform examinations for purposes of workers' compensation insurance  
15 and the panel companies that work with them; and

16 (g) The department of labor and industries shall appoint one  
17 attorney who represents injured workers.

18 (2) The work group must:

19 (a) Develop strategies for reducing the number of medical  
20 examinations per claim while considering claim duration and medical  
21 complexity;

22 (b) Develop strategies for improving access to medical records,  
23 including records and reports created during the course of or  
24 pursuant to an examination;

25 (c) Consider whether the department of labor and industries  
26 should do all the scheduling of independent medical examinations;

27 (d) Consider the circumstances for which independent medical  
28 examiners should be randomly selected or specified;

29 (e) Consider workers' rights in the independent medical  
30 examination process including attendance, specialist consultations,  
31 the audio or video recording of examinations, and the distance and  
32 location of examinations;

33 (f) Recommend changes to improve the efficiency of the  
34 independent medical examination process; and

35 (g) Identify barriers to increasing the supply of in-state  
36 physicians willing to do independent medical examinations in the  
37 workers' compensation system.

38 (3) The department of labor and industries must report its  
39 findings and recommendations to the legislature by December 11, 2020.

1 (4) This section expires December 31, 2020.

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