

SENATE BILL REPORT

SB 5627

As of January 26, 2022

Title: An act relating to injured workers' rights during independent medical examinations.

Brief Description: Concerning injured workers' rights during independent medical examinations.

Sponsors: Senators Stanford, Conway, Keiser, Kuderer, Lovelett, Lovick and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/26/22.

Brief Summary of Bill

- Allows an injured worker, at the worker's cost, to record certain examinations and to have one adult present to observe.
- Provides that the recording and observer may not interfere with the examination.
- Requires the worker, upon request, to provide a copy to the Department of Labor and Industries or the self-insurer.
- Provides that any material alteration of the recording by the injured worker may be subject to repayment of workers' compensation benefits.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Susan Jones (786-7404)

Background: Worker's Compensation—General. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits. "Occupational disease" means a

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disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. The Department of Labor and Industries (L&I) administers the state's workers' compensation system.

Required Exams. Whenever L&I or the self-insurer deems it necessary to make a decision regarding claim allowance or reopening; resolve a new medical issue, an appeal, or case progress; or evaluate the worker's permanent disability or work restriction, a worker shall submit to an independent medical examination (IME) by a physician or physicians selected by L&I, with the report provided to the person ordering the IME, the attending physician, and the injured worker.

The IME must be at a place reasonably convenient to the injured worker, or alternatively use telemedicine if L&I determines telemedicine is appropriate for the IME. "Reasonably convenient" means at a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. L&I must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in that community.

L&I or the self-insurer must provide the physician performing an IME with all relevant medical records from the worker's claim file. The director of L&I may charge the cost of the IME to the self-insurer or to the medical aid fund. The cost of the IME must include payment to the worker of the reasonable expenses.

"Examination" means a physical or mental examination by a medical care provider licensed to practice medicine, osteopathy, podiatry, chiropractic, dentistry, or psychiatry at the request of L&I or the self-insurer or by order of the Board of Industrial Insurance Appeals (BIIA).

Summary of Bill: An injured worker, at the worker's cost, may record an IME by audio, video, or both. The worker may have one adult, except the worker's legal representative, present to observe the IME. The worker must take reasonable steps to ensure the recording equipment does not interfere with the IME. The observer must be unobtrusive and not interfere with the IME. The worker, upon request, must provide a copy to L&I or the self-insurer within 14 days of receiving the request. Any material alteration of the recording by the injured worker may subject the worker to repayment of workers' compensation benefits. The recordings are deemed confidential.

BIIA order is removed from the definition of examination for requesting an IME.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We should focus on the injured workers that we are trying to help in this system. We want to accommodate an injured worker who wants to have a helper, spouse, sibling, or someone else, with them. This is not too much to ask. Being recorded is more sensitive. A person may want to record it to remember what they said, what the doctor said, or to make sense of it. This does not seem like a lot to ask. People seem to be making this into a much bigger issue, imagining a documentarian or videographer. In this case, the workers are required to go to these exams. Videos are done routinely in non-workers' compensation cases. People are citing research that says third parties interfere but the same research says it does not have an impact. HIIPA is also raised as a concern but patients can discuss their medical records and issues with anyone they choose. The concern about video alteration is addressed in the bill with consequences of benefit loss.

The bill addresses a very small number of exams. This is often a doctor selected by the self-insured employer. Workers have complained to L&I that the report and exam are not accurate. Their complaints get disregarded because it is their word against the doctor. Outside the workers' compensation system, exams are recorded. These are the same doctors performing IMEs. Injured workers should be allowed the same transparency as other Washington workers. A IME doctor said he is not opposed to being recorded. A worker testified last year about traveling a long distance for a five minute exam. This will simplify the exam process.

CON: The bill will increase time and expense to all parties. It will cause and administrative backlog. The bill is silent on rescheduling IMEs because of technological issues. There are no safeguards to recording. This will decrease the number of available examiners. There are no security provisions, it could appear on Facebook or Tik Tok. The videotapes in non-workers' compensation cases do not show up again in court or are used. Including an observer in neurological exams invalidates the test findings. This will hurt injured workers. IME doctors are picked off a rotating list. IME doctors are not allowed to say anything to the worker.

This is not in the best interest of workers making progress in recovery. There is no data showing that recording is an issue and it is not supported by the IME task force after much discussion. Attending providers are not recorded and they have more to gain promoting continued treatment. There is already a robust process to challenge the exam and the examiner. Complaints are taken very seriously. The penalties are not serious enough. There are not enough safeguards. They can already have someone at the exam. We will lose IME doctors while there are already not enough.

OTHER: This may impact the number of examiners. We think the psychiatric exams should be excluded. L&I already allows someone 18 or over to attend as long as they don't intrude.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Brian Wright, Washington State Association for Justice; Rachel Hamar, Washington State Association for Justice; Dr. Thomas Kelly; AJ Johnson, WSCFF; Joe Kendo, Washington State Labor Council, AFL-CIO.

CON: Kristin McCoy, MES Solutions; Eugene Toomey; Daniel Brzusek, WAIME; Phyllis Sanchez, private practice; Rose Gundersen, Washington Retail Association; Carolyn Logue, Washington IME Coalition; Tom Kwieciak, WA Farm Bureau/Building Industry Association of WA; Robert Battles, Association of Washington Business (AWB).

OTHER: Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.