
SUBSTITUTE HOUSE BILL 1763

State of Washington

67th Legislature

2022 Regular Session

By House Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Sells, Berry, Valdez, Goodman, Peterson, Simmons, Pollet, Ormsby, Harris-Talley, and Kloba)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to injured workers' rights during independent
2 medical examinations; amending RCW 51.36.070; and adding a new
3 section to chapter 51.36 RCW.

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 work
11 restriction, a worker shall submit to examination by a physician or
12 physicians selected by the department, with the rendition of a report
13 to the person ordering the examination, the attending physician, and
14 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 (2) The department or self-insurer shall provide the physician
4 performing an examination with all relevant medical records from the
5 worker's claim file. The director, in his or her discretion, may
6 charge the cost of such examination or examinations to the self-
7 insurer or to the medical aid fund as the case may be. The cost of
8 said examination shall include payment to the worker of reasonable
9 expenses connected therewith.

10 (3) For purposes of this section, "examination" means a physical
11 or mental examination by a medical care provider licensed to practice
12 medicine, osteopathy, podiatry, chiropractic, dentistry, or
13 psychiatry at the request of the department or self-insured employer
14 (~~or by order of the board of industrial insurance appeals~~).

15 (4)(a) A worker has the right to record either the audio, video,
16 or both, of all examinations, except for psychiatric examinations,
17 ordered under this section or RCW 51.32.110. For psychiatric
18 examinations, the worker has the right to audio recording only.

19 (b) The worker must pay the costs of recording the examination.

20 (c) Upon request, the worker must provide one copy to the
21 department or self-insured employer within 14 days of receiving the
22 request, but in no case prior to the issuance of a written report of
23 examination.

24 (d) The worker must take reasonable steps to ensure the recording
25 equipment does not interfere with the examination.

26 (e) Any material alteration of the recording by the injured
27 worker or done on the worker's behalf that results in the receipt of
28 benefits may be subject to repayment of those benefits pursuant to
29 RCW 51.32.240.

30 (f) Recordings made under this subsection (4) are deemed
31 confidential pursuant to RCW 51.28.070.

32 (g) The worker has the right to have one person, at least 18
33 years of age, of the worker's choosing, but not the worker's legal
34 representative, present to observe all examinations, except for
35 psychiatric examinations, ordered under this section or RCW
36 51.32.110. The observer must be unobtrusive and not interfere with
37 the exam.

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

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.36
2 RCW to read as follows:

3 (1) The department shall monitor the impacts of RCW 51.36.070(4),
4 including:

5 (a) Tracking how RCW 51.36.070(4) impacts the number of available
6 independent medical examination providers for all examination types;
7 and

8 (b) Monitoring the costs to claimants, employers, providers, and
9 independent medical examination firms.

10 (2) Beginning December 1, 2022, and each December 1st thereafter,
11 the department shall submit a report to the appropriate committees of
12 the legislature detailing the impacts of RCW 51.36.070(4).

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