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**HOUSE BILL 1763**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representatives Bronoske, Sells, Berry, Valdez, Goodman, Peterson, Simmons, Pollet, Ormsby, Harris-Talley, and Kloba

Prefiled 01/04/22. Read first time 01/10/22. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to injured workers' rights during independent  
2 medical examinations; and amending RCW 51.36.070.

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

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

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

14 (b) The examination must be at a place reasonably convenient to  
15 the injured worker, or alternatively utilize telemedicine if the  
16 department determines telemedicine is appropriate for the  
17 examination. For purposes of this subsection, "reasonably convenient"  
18 means at a place where residents in the injured worker's community  
19 would normally travel to seek medical care for the same specialty as  
20 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 ordered under this section or RCW  
17 51.32.110.

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

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

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

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

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

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

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

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