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**SUBSTITUTE HOUSE BILL 1763**

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**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)

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

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

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

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

(b) The examination must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination. For purposes of this subsection, "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. The department must address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in that community.

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

(3) For purposes of this section, "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 the department or self-insured employer ((~~or by order of the board of industrial insurance appeals~~)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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