

HOUSE BILL REPORT

HB 1763

As Reported by House Committee On:
Labor & Workplace Standards

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

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

Sponsors: Representatives Bronoske, Sells, Berry, Valdez, Goodman, Peterson, Simmons, Pollet, Ormsby, Harris-Talley and Kloba.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/14/22, 2/2/22 [DPS].

Brief Summary of Substitute Bill

- Allows an injured worker to make an audio and video recording of any physical independent medical examination, and an audio recording of a psychiatric examination.
- Allows the worker to have one person present during any physical independent medical examination.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Harris.

Staff: Trudes Tango (786-7384).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

In the workers' compensation system, a State Fund or self-insured employer's claim manager may request an independent medical examination (IME) of the injured worker in order to: (1) determine whether to allow or reopen a claim; (2) resolve a new medical issue, an appeal, or case progress; or (3) evaluate a worker's permanent disability or work restriction.

The IMEs are performed by medical examiners approved by the Department of Labor and Industries (Department). Generally, private IME firms facilitate scheduling of and payment to IME providers. The provider must submit written reports of the examination to the worker, the worker's attending physician, and the person ordering the IME. Generally, information contained in claim files and records of injured workers are confidential and are not subject to public inspection. Exceptions exist for the injured worker's representative, the employer, and attending providers involved in the claim.

Workers are prohibited, by Department rule, from recording the IME. The Department's rules do allow workers to bring an "adult friend or family member to the IME to provide comfort and reassurance" in examinations, except for psychiatric exams. The person accompanying the injured worker must not be compensated for attending and may not be the worker's health provider involved in the worker's care or the worker's legal representative or other personnel employed by the worker's legal representative. The Department may determine other conditions under which a worker can have another person present during the IME.

A worker may send written complaints about an IME provider's conduct during the IME to the Department or self-insured employer.

Legislation enacted in 2020 made changes to the IME statutes and required the Department to convene an IME work group to discuss ways to improve the IME process. The IME work group issued a report to the Legislature in December 2020. One of the topics the work group discussed was audio or videoing recording of IMEs. The work group did not vote on a strategy specific to recording IMEs and the Department did not recommend recording IMEs.

Summary of Substitute Bill:

A worker has a right to record either the audio or video, or both of any physical IME, and an audio recording of any psychiatric IME. The worker must pay the costs of recording. If requested, the worker must provide a copy of the recording to the Department or self-insured employer within 14 days of the request, but not prior to the issuance of the written report of the IME.

The worker must take reasonable steps to ensure the recording equipment does not interfere with the IME. Any material alteration to the recording that results in the receipt of benefits may be subject to repayment of those benefits. Recordings are treated as confidential as provided under the existing confidentiality statute.

The worker has a right to have one person, at least 18 years old and of the worker's choosing, present to observe an IME, except for psychiatric IMEs. The observer may not be the worker's legal representative and must be unobtrusive and not interfere with the IME.

Substitute Bill Compared to Original Bill:

The substitute bill excludes psychiatric exams from being video recorded and from having a third-party observer.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) These exams are crucial in the worker's recovery process. This is about fairness and protection for workers. Most IMEs are not controversial, and no recording will be needed. The bill will not result in every IME being recorded. It is intended to target a small number of cases. Sometimes IME providers do not perform the exams they are required to do, and the worker does not have the ability to prove that the IME was improper. Transparency in the process is needed.

(Opposed) The IME work group already considered this issue and did not recommend it. Allowing recordings will make the process adversarial. Third-party observers are already allowed, but the rules prohibit them from being compensated and psychiatric exams are excluded. Third-party observers in cognitive exams negatively impact the evaluations. Providers will no longer want to perform IMEs and there will be fewer available providers, which will have a negative impact on workers. This bill would violate the Health Insurance Portability and Accountability Act.

(Other) The Department depends on the expertise of IME providers and if recordings discourage providers from conducting IMEs, this will impact claims. The current restrictions in the Department's rules should be considered in the bill.

Persons Testifying: (In support) Representative Dan Bronoske, prime sponsor;

Christopher Carlisle, Carlisle and Byers; Diane Whitten, International Brotherhood of Electrical Workers 984 and Hanford Atomic Metal Trades Council; Leslie Diaz; Owen Bargreen; Thomas Kelly; Brian Wright, Washington State Association for Justice; Gayle Krona; and AJ Johnson, Washington State Council of Fire Fighters.

(Opposed) Carolyn Logue, Washington Independent Medical Exam Coalition; Candice Bock, Association of Washington Cities; Dan Farrington, Sunrise Medical Consultants; Eugene Toomey; Kristin McCoy, Medical Evaluation Specialist Solutions; Bob Battles, Association of Washington Business; Craig Smith; Kenneth Brait; Tom Kwieciak, Building Industry Association of Washington and Washington State Farm Bureau; Christine Brewer, Washington Self-Insurers Association; Lynda White; Wendy Marlowe; and Fernando Proano, Proano Associates, Incorporated.

(Other) Tammy Fellin, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.